

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDER

PROPOSED RULES

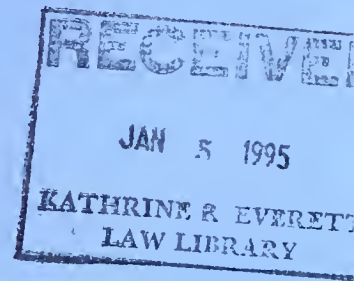
- Commerce
- Environment, Health, and Natural Resources
- Human Resources
- Labor
- Practicing Psychologists
- Public Education
- State Personnel

RRC OBJECTIONS

CONTESTED CASE DECISIONS

ISSUE DATE: January 3, 1995

Volume 9 • Issue 19 • Pages 1513 - 1602



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 3 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



Office of Administrative Hearings
P. O. Drawer 27447
Raleigh, North Carolina 27611-7447
(919) 733-2678

Julian Mann III,
Director
James R. Scarcella Sr.,
Deputy Director
Molly Masich,
Director of APA Services

Staff:
Ruby Creech,
Publications Coordinator
Teresa Kilpatrick,
Editorial Assistant
Jean Shirley,
Editorial Assistant

*This publication is printed on permanent,
acid-free paper in compliance with
G.S. 125-11.13.*

ISSUE CONTENTS

I. EXECUTIVE ORDER

Executive Order 66 1513

II. PROPOSED RULES

Commerce

Banking Commission 1515

Environment, Health, and

Natural Resources

Coastal Management 1550

Health Services 1557

Wildlife Resources 1553

Human Resources

Child Development 1531

Labor

OSHA 1546

Licensing Board

Practicing Psychologists 1571

Public Education

Elementary and Secondary 1568

State Personnel

Office of State Personnel 1574

III. RRC OBJECTIONS 1575

IV. CONTESTED CASE DECISIONS

Index to ALJ Decisions 1577

Text of Selected Decisions

94 OSP 0143 1591

94 EHR 1031 1595

V. CUMULATIVE INDEX 1599

NORTH CAROLINA REGISTER

Publication Schedule

(November 1994 - September 1995)

Volume and Issue Number	Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing <i>15 days from notice</i>	* End of Required Comment Period <i>30 days from notice</i>	Last Day to Submit to RRC	** Earliest Effective Date
9:15	11/01/94	10/11/94	10/18/94	11/16/94	12/01/94	12/20/94	02/01/95
9:16	11/15/94	10/24/94	10/31/94	11/30/94	12/15/94	12/20/94	02/01/95
9:17	12/01/94	11/07/94	11/15/94	12/16/94	01/03/95	01/20/95	03/01/95
9:18	12/15/94	11/22/94	12/01/94	12/30/94	01/17/95	01/20/95	03/01/95
9:19	01/03/95	12/08/94	12/15/94	01/18/95	02/02/95	02/20/95	04/01/95
9:20	01/17/95	12/21/94	12/30/94	02/01/95	02/16/95	02/20/95	04/01/95
9:21	02/01/95	01/10/95	01/18/95	02/16/95	03/03/95	03/20/95	05/01/95
9:22	02/15/95	01/25/95	02/01/95	03/02/95	03/17/95	03/20/95	05/01/95
9:23	03/01/95	02/08/95	02/15/95	03/16/95	03/31/95	04/20/95	06/01/95
9:24	03/15/95	02/22/95	03/01/95	03/30/95	04/17/95	04/20/95	06/01/95
10:1	04/03/95	03/13/95	03/20/95	04/18/95	05/03/95	05/22/95	07/01/95
10:2	04/17/95	03/24/95	03/31/95	05/02/95	05/17/95	05/22/95	07/01/95
10:3	05/01/95	04/07/95	04/17/95	05/16/95	05/31/95	06/20/95	08/01/95
10:4	05/15/95	04/24/95	05/01/95	05/30/95	06/14/95	06/20/95	08/01/95
10:5	06/01/95	05/10/95	05/17/95	06/16/95	07/03/95	07/20/95	09/01/95
10:6	06/15/95	05/24/95	06/01/95	06/30/95	07/17/95	07/20/95	09/01/95
10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
10:8	07/14/95	06/22/95	06/29/95	07/31/95	08/14/95	08/21/95	10/01/95
10:9	08/01/95	07/11/95	07/18/95	08/16/95	08/31/95	09/20/95	11/01/95
10:10	08/15/95	07/25/95	08/01/95	08/30/95	09/14/95	09/20/95	11/01/95
10:11	09/01/95	08/11/95	08/18/95	09/18/95	10/02/95	10/20/95	12/01/95
10:12	09/15/95	08/24/95	08/31/95	10/02/95	10/16/95	10/20/95	12/01/95

This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

** An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.*

*** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.*

EXECUTIVE ORDER NO. 66
STATEWIDE FLEXIBLE
BENEFITS PROGRAM

WHEREAS, State employees are an important resource to state government; and

WHEREAS, the State needs to provide a uniform competitive compensation package that includes an up-to-date benefits program in order to maintain its competitive edge with businesses and other states in its region; and

WHEREAS, the State needs to provide the same tax-advantaged benefits to all State employees, regardless of the agency, department or university where they work; and

WHEREAS, the reasonable cost of administering an efficiently designed flexible benefits program could be recovered by the savings associated with such a program;

NOW, THEREFORE, By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, **IT IS ORDERED:**

Section 1. Policy.

A statewide employee flexible benefits coordination effort is hereby formalized for the purpose of administering these benefits to employees and to promote the development and maintenance of a competitive compensation package for all State employees.

Section 2. Administration.

The State Personnel Director shall be responsible for central flexible benefits coordination for all State employees. There is created within the Office of State Personnel an Employee Flexible Benefits Program (EFBP). The administration of the statewide flexible benefits plan shall become the responsibility of EFBP. This program shall begin the process of assessing the flexible benefits plan design, administrative procedures, administrative capabilities, and communications needs for the implementation of a comprehensive statewide benefit plan. These responsibilities include, but are not limited to the following:

- (a) Implementing the Statewide Flexible Benefits Plan;
- (b) Administering contracts for supplemental insurance carriers and third party administrator for spending accounts and premium conversion plans if necessary;

- (c) Coordinating administration of spending accounts;
- (d) Coordinating enrollment and communication efforts concerning the Statewide Flexible Benefits Plan and other benefit programs;
- (e) Coordinating the Statewide Flexible Benefits Advisory Committee; and
- (f) Speaking on behalf of State government flexible benefits in the Legislature.

Section 3. Statewide Flexible Benefits Advisory Committee.

There is hereby established a Statewide Flexible Benefits Advisory Committee (FBAC) for the purpose of assisting the State in developing and maintaining an effective flexible benefits plan for State employees. The FBAC shall make recommendations to the State Personnel Director concerning the administration of the Flexible Benefits Plan and the components of the flexible benefits package for State employees.

Section 4. Duties of the FBAC.

The FBAC shall be responsible for the following:

- (a) Assist the Employee Flexible Benefits Section in developing administrative functions;
- (b) Review existing flexible benefit programs in State government;
- (c) Recommend pre-tax benefits to be included in the EFBP;
- (d) Assist in reviewing contracts and administering spending accounts; and
- (e) Undertake other functions as necessary.

Section 5. Membership.

The membership of the FBAC shall consist of nine members appointed by the Governor as follows:

- (a) A Representative from the State Controller's Office;
- (b) A Representative from the State Treasurer's Office;
- (c) A Representative from the State Budget Office;
- (d) A Representative from the Attorney General's Office;
- (e) A Representative from the State Health Benefits Office;
- (f) A Representative from the Administrative Office of the Courts;
- (g) A Representative from the General Assembly;
- (h) A Representative from the University of

- North Carolina System;
- (i) A Representative from the State Employees Association.

One representative each from the Department of Public Instruction and the Department of Community Colleges will serve as non-voting ex officio members of the FBAC.

The Director of the Office of State Personnel shall appoint a chair from among the membership for a one year term. The EFBP Manager shall serve as an ex-officio member and provide support staff as required.

This Order shall become effective immediately.

Done in the City of Raleigh this the 5th day of December, 1994.

**TITLE 4 - DEPARTMENT OF
COMMERCE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Banking Commission intends to amend rules cited as 4 NCAC 3C .1601; 3E .0101 - .0102, .0201, .0302; 3F .0201, .0304, .0503 - .0504, .0506; 3I .0101, .0201 - .0204, .0301, .0306, .0401 - .0403, .0405 - .0406, .0501 - .0503, .0601 - .0602, .0702 - .0703, .0705; adopt 4 NCAC 3E .0604.

The proposed effective dates of this action:

4 NCAC 3C .1601; 3E .0101 - .0102, .0201, .0302, .0604; 3F .0201, .0304, .0503 - .0504, .0506 is June 1, 1995.

4 NCAC 3I .0101, .0201 - .0204, .0301, .0306, .0401 - .0403, .0405 - .0406, .0501 - .0503, .0601 - .0602, .0702 - .0703, .0705 is April 1, 1995.

The public hearing will be conducted at 9:00 a.m. on February 2, 1995 at the Dobbs Building, 430 North Salisbury Street, Room 6227, Raleigh, North Carolina.

Reason for Proposed Action:

4 NCAC 3C .1601 - The proposed amendment will reduce the fees charged for filing various applications with the Commissioner of Banks. In addition, the rule will provide the costs of obtaining various publications and public records provided by the Banking Commission.

4 NCAC 3E .0101 - This amendment distinguishes the physical location and the mailing address of the Commissioner of Banks.

4 NCAC 3E .0102 - This amendment eliminates the requirement that the Commissioner of Banks publish approval of a consumer finance licensee application in the newspaper. N.C.G.S. 53-168 and N.C.G.S. 53-169 does not require publication of applicants approval by Commissioner of Banks. This task has become burdensome and expensive.

4 NCAC 3E .0201 & .0302 - These amendments distinguishes the physical location and the mailing address of the Commissioner of Banks.

4 NCAC 3E .0604 - The adoption of this Rule will require consumer finance licensees to notify the Commissioner of Banks of computer changes that impact charges applicable to loans within 10 days.

4 NCAC 3F .0201 - This amendment provides definitions for the terms "agent" and "location" as used in 4 NCAC 3F. In addition, it distinguishes

the physical location and the mailing address of the Commissioner of Banks.

4 NCAC 3F .0304 - This amendment clarifies how the agent location fee is calculated.

4 NCAC 3F .0503 - This amendment clarifies the contents of the annual statement filed by licensees and provides the date that this information should be based upon.

4 NCAC 3F .0504 - This amendment sets a deadline for filing the quarterly agent activity reports. In addition, it changes some of the information requested in the report.

4 NCAC 3F .0506 - This amendment requires that the licensee file a certificate or other evidence to show compliance with N.C.G.S. 53-198 or N.C.G.S. 53-199(b), respectively.

4 NCAC 3I .0101 - This amendment distinguishes the physical location and the mailing address of the Commissioner of Banks. In addition, this amendment defines certified financial statements, liquid assets, and net worth.

4 NCAC 3I .0201 - This amendment eliminates the grandfathering provisions in the rule that will expire on January 9, 1995 and March 31, 1995. In addition, it sets forth requirements for these mortgage bankers who want to rely on the parent's capital to satisfy the networth requirements.

4 NCAC 3I .0202 - This amendment eliminates the grandfathering provisions in the rule that will expire on January 9, 1995 and March 31, 1995.

4 NCAC 3I .0203 - This amendment sets the liquidity requirement for mortgage brokers and mortgage bankers.

4 NCAC 3I .0204 - This amendment increases the surety bond requirements for mortgage bankers.

4 NCAC 3I .0301 - This amendment makes technical changes to the current rule.

4 NCAC 3I .0306 - This amendment changes the percentage at which a change in ownership of the registrant's stock would be a transfer or assignment of the Certificate of Registration.

4 NCAC 3I .0401 - This amendment provides for expiration of the license upon failure to pay the annual fee.

4 NCAC 3I .0402 - This amendment requires that the filing of certified financial statements for mortgage bankers and mortgage brokers.

4 NCAC 3I .0403 - This amendment requires that the account containing third-party fees be reconciled monthly.

4 NCAC 3I .0405 - This amendment requires that a monthly reconciliation of account be included in the books and records.

4 NCAC 3I .0406 - This amendment changes the amount of time that the registrant has to notify the

Commissioner of a name change to thirty days prior to the effective date.

4 NCAC 3I .0501 - This amendment changes the amount of time that the registrant has to notify the Commissioner material changes in its application to thirty days prior to the effective date.

4 NCAC 3I .0502 - This amendment changes the amount of time that the registrant has to notify the Commissioner of its decision to cease operations to seven days. In addition, this amendment requires that the Certificate of Registration be surrendered within fifteen days after it has ceased operations.

4 NCAC 3I .0503 - This amendment changes the amount of time in which a registrant has to notify the Commissioner of a failure to meet minimum networth, liquidity and bonding requirements to seven days.

4 NCAC 3I .0601 - This amendment makes failure to provide an accurate payoff to the borrower a prohibited act.

4 NCAC 3I .0602 - This amendment makes advertising of mortgage loan interest rates in violation of laws and regulation conduct deemed to fraudulent, deceitful, or misleading.

4 NCAC 3I .0702 - This amendment changes the time that a registrant has to provide the borrower with information which was orally submitted over the telephone to ten days.

4 NCAC 3I .0703 - This amendment is a technical correction.

4 NCAC 3I .0705 - This amendment eliminates the requirement that a mortgage banker discloses fees or points paid to the borrower to the mortgage broker.

Comment Procedures: Comments must be submitted in writing not later than Thursday, February 2, 1995. Written comments should be directed to: Garistine M. Davis, Counsel, North Carolina Banking Commission, Post Office Box 29512, Raleigh, N. C. 27626-0512.

CHAPTER 3 - BANKING COMMISSION

SUBCHAPTER 3C - BANKS

SECTION .1600 - FEES

.1601 FEES, COPIES AND PUBLICATION COSTS

(a) For applications, petitions, and other proceedings which must be filed with the Commissioner of Banks the following fees shall be paid to the Commissioner at the time of filing:

(1)	Application for the Formation of a New Bank	\$10,000.00	\$8,000.00
(2)	Application for Authority to Decrease Capital Stock		\$250.00
(2)	(3)Application to Merge or Consolidate Banks (fee is per bank)	\$4,000.00	\$3,000.00
(3)	(4)Application for Reorganization Into a Bank Holding Company Through an Interim Bank (fee is per bank)	\$4,000.00	\$3,000.00
(4)	(5)Application for Reorganization	\$4,000.00	\$3,000.00
(5)	(6)Application for Conversion of a National Bank to State Charter		\$5,000.00
(6)	(7)Application for Voluntary Liquidation		\$3,000.00
(7)	(8)Application for Authority to Create and Invest in a Subsidiary		\$750.00
(8)	(9)Application for Approval of Change in Bank Control or Management		\$1,000.00
(10)	Petition for Authority to Exceed Investment or Loan Limitations		\$250.00
(9)	(11)Application for Authority to Establish a Branch Bank	\$1,000.00	\$500.00
(10)	(12)Application for Authority to Relocate a Main Office or Branch	\$750.00	\$500.00
(11)	(13)Application for Authority to Create a Limited Service Facility	\$1,000.00	\$500.00
(12)	(14)Application for Authority to Convert a Branch to a Limited Service Facility		\$500.00
(15)	Authority to Close a Branch		\$1,000.00
(16)	Request for Replacement Charter Certificate		\$25.00
(17)	Request for Certificate of Good Standing		\$25.00
(13)	(18)Application for Conversion of a Savings and Loan Association or a Savings Bank to a State Bank	\$7,500.00	\$5,000.00
(14)	(19)Application to Form a Nondepository Trust Company	\$10,000.00	\$8,000.00

(b) The fees set forth in Paragraph (a) of this Rule are for standard applications, petitions, and other proceedings filed and considered in the ordinary course of business. Any application, petition or other proceeding which in the opinion of the Commissioner of Banks requires extraordinary review, investigation or special examination will be subject to additional expenses at an hourly rate to be determined annually by the Banking Commission. The Commissioner of Banks will advise an applicant or petitioner in advance of any additional work required and the hourly rate for the same.

(c) Publications available through the Banking Commission and copies of public records may be obtained at the following costs.

(1) Publications:

- (A) Annual Report of Consumer Finance Licensees \$4.00
- (B) Annual Report of State chartered Banks \$5.00
- (C) Annual Report of Special Services \$3.50
- (D) North Carolina Administrative Code Chapter 3 Banking Commission and Related Regulations \$7.50
- (E) Annual Subscription for Official Notice Maximum Rate of Interest Allowed on Certain Loans \$10.00

(2) Copies of public records: one dollar (\$1.00) per page.

(1) Banking Commission Regulations and Policies:

- (A) Bank Policy Statements, \$4.00
- (B) Consumer Finance Policy Statements, \$3.00
- (C) North Carolina Administrative Code- Title IV, Chapter III, \$8.00
- (D) Monthly Official Notice-Maximum Rate of Interest Allowed on Certain Loans (Annual Subscription). \$11.00

(2) Directories:

- (A) Consumer Finance Licensees, \$6.00
- (B) Money Transmitter Licensees, \$2.00
- (C) Mortgage Banker/ Broker Registrants, \$5.00
- (D) North Carolina Bank Directors, \$6.00
- (E) Refund Anticipation Lenders, \$6.00
- (F) State-Chartered Banks, \$3.00
- (G) State-Chartered Bank Branches, \$6.00

(3) Publications:

- (A) 1991 History of the North Carolina Banking Commission, \$6.00
- (B) North Carolina Banking Commission

- Annual Report, \$12.00
- (C) Quarterly List of Bank Rankings by Assets/by Deposits:
 - (i) National and State, \$2.00
 - (ii) State, \$2.00
- (D) State-Chartered Banks Total Assets History (3/87-), \$3.00

(d) Any publication or copy of a public record not set forth in Paragraph (c) of this Rule may be purchased at a price of two dollars (\$2.00) for the first page and ten cents (\$0.10) for each additional page.

~~(d) Any new publication or any publication not set forth in Subparagraph (c)(1) of this Rule may be purchased at a price of twenty five cents (\$0.25) per page.~~

Statutory Authority G.S. 53-92; 53-122(3).

SUBCHAPTER 3E - LICENSEES UNDER NORTH CAROLINA CONSUMER FINANCE ACT

SECTION .0100 - LICENSING

.0101 APPLICATION

(a) No person shall make loans under the provisions of the North Carolina Consumer Finance Act without first obtaining a license from the Commissioner of Banks. Application for a consumer finance license shall be accomplished by the execution of Form NCCF 2 and the payment of the statutory fee. That form contains a request for a license to operate a business under the North Carolina Consumer Finance Act and incorporates all statutory requirements and criteria. The form may be obtained from and shall be filed with The Commissioner of Banks located at 430 North Salisbury Street, Dobbs Building, Suite 6210, Raleigh, North Carolina 27611. The mailing address is P.O. Box 29512, Raleigh, North Carolina 27626-0512.

The Commissioner of Banks
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.

(b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written notice of the application to all licensees operating within the community proposed to be served as described in the application. Where a licensee holds two or more licenses the notification is to be mailed to the home office of

such licensee. The notification may be by copy of acknowledgement to the applicant.

(c) Following an investigation of the application the Commissioner of Banks shall decide as to:

- (1) approval of the application,
- (2) denial of the application.

Statutory Authority G.S. 53-92; 53-95; 53-104; 53-168; 53-185; 150B-21.2.

.0102 APPROVAL

(a) Upon approval by the Commissioner of Banks of an application for a consumer finance license, he will notify the applicant in writing.

~~(b) The Commissioner shall give notice, one time only, of his approval in a newspaper of general circulation in the community in which the applicant proposes to locate.~~

~~(b)~~ (b) If no written objection is submitted to the Commissioner within 20 days following the date of his approval, he shall issue a license, Form NCCF 4.

~~(c)~~ (c) In the event a written objection is submitted to the Commissioner within 20 days following the date of his approval, the application and approval shall be referred to the Banking Commission in compliance with Section .0200 of this Subchapter.

Statutory Authority G.S. 53-92; 53-95; 53-104; 53-168; 58-169; 53-185; 53-188.

SECTION .0200 - ACTIONS REQUIRING APPROVAL OF COMMISSIONER OF BANKS

.0201 OPERATION OF OTHER BUSINESS IN SAME OFFICE

(a) No licensee shall operate any other business in the same office with its consumer finance business except upon written approval of the Commissioner of Banks pursuant to G.S. 53-172(b).

(b) Any other loan business conducted at the same location where a licensee makes loans pursuant to Chapter 53, Article 15 of the North Carolina General Statutes, must be operated through a separate corporate entity.

(c) Application for other business authority shall be made upon Form NCCF 5 and shall be accompanied by a fee of twenty five dollars (\$25.00). An NCCF 5 form can be obtained from and shall be filed with The Commissioner of Banks located at 430 North Salisbury Street, Dobbs Building, Suite 6210, Raleigh, North Carolina 27611. The

mailing address is P.O. Box 29512, Raleigh, North Carolina 27626-0512.

~~The Commissioner of Banks
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.~~

(d) Upon approval of the application, the Commissioner of Banks will issue a Certificate of Authority which shall be posted in a public area of a licensee's office.

Statutory Authority G.S. 53-92; 53-122(3); 53-168; 53-172; 53-185; 150B-21.2.

SECTION .0300 - REPORTS REQUIRED BY COMMISSIONER OF BANKS

.0302 ANNUAL REPORT

Each licensee under the North Carolina Consumer Finance Act shall file an annual report with the Commissioner of Banks on or before March 31 each year. Such report shall be filed on Form NCCF 1. That form contains various schedules which reflect the financial condition of the licensee as well as the results of its operations. The form along with necessary instructions relative to its execution may be obtained from and shall be filed with The Commissioner of Banks located at 430 North Salisbury Street, Dobbs Building, Suite 6210, Raleigh, North Carolina 27611. The mailing address is P.O. Box 29512, Raleigh, North Carolina 27626-0512.

~~The Commissioner of Banks
Post Office Box 29512
Room 6210, Dobbs Building
430 North Salisbury Street
Raleigh, North Carolina 27626-0512.~~

Statutory Authority G.S. 53-92; 53-184(b); 53-185; 150B-21.1.

SECTION .0600 - CONSUMER FINANCE OFFICES

.0604 NOTIFICATION OF CHANGES IN OPERATIONS

Each licensee shall notify the Commissioner of Banks of any changes in its computer operations (electronic data processing) which would impact computations of interest charges, insurance charges and any other charges applicable to its loans within 10 days after the change has been implemented.

Statutory Authority G.S. 53-104; 53-184; 53-185.

**SUBCHAPTER 3F - LICENSEES
UNDER MONEY TRANSMITTERS
ACT**

*Statutory Authority G.S. 53-193; 53-196;
53-206.1; 150B-21.2.*

SECTION .0300 - LICENSING

SECTION .0200 - ADMINISTRATIVE

.0201 DEFINITIONS

(a) As used in the Rules, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-193 shall have the same meaning as set forth therein;
- (2) "Money Transmitters Act" shall mean the Money Transmitters Act codified at Chapter 53, Article 16 of the North Carolina General Statutes (G.S. 53-192, et seq.);
- (3) "State" shall mean the State of North Carolina;
- (4) "Applicant" shall mean a person who applies for a license under the Money Transmitters Act;
- (5) "Controlling person" shall mean any 10% equity owner of an applicant or licensee;
- (6) "Executive officer" shall have the same meaning as set forth in Regulation "O," promulgated by the Board of Governors of the Federal Reserve System and codified in the Code of Federal Regulations at Title 12, Chapter II, Part 215-
i
- (7) "Agent" shall mean a person, partnership, corporation, or other entity authorized by a licensee to sell or issue checks of the licensee in this State as a service or for a fee or other consideration on the behalf of the licensee;
- (8) "Location" shall mean any place of business within this State operated by the licensee or the licensee's agent at which checks of the licensee are issued or sold.

(b) An application for a license, amendment to the application, annual statement, notice, or any other document which is required by law or regulation to be filed with the Commissioner shall be addressed as follows: The Commissioner of Banks located at 430 North Salisbury Street, Dobbs Building, Suite 6210, Raleigh, North Carolina 27611. The mailing address is P.O. Box 29512, Raleigh, North Carolina 27626-0512.

Commissioner of Banks

Post Office Box 29512

Raleigh, North Carolina 27626-0512

.0304 AGENT LOCATION FEE

(a) A licensee shall pay to the Commissioner within five days after the issuance of a license, and annually thereafter on or before December 31 of each year, an agent location fee of ten dollars (\$10.00) for each location within this State at which its checks are sold. Notwithstanding the number of locations within this State, the agent location fee shall not exceed five thousand dollars (\$5,000) per annum for each licensee.

(b) The agent location fee in Paragraph (a) of this Rule shall be based upon the number of locations listed in the annual statement required by G.S. 53-204.

Statutory Authority G.S. 53-202; 53-206.1; 150B-21.2.

**SECTION .0500 - REPORTING
AND NOTIFICATIONS**

.0503 ANNUAL STATEMENT

(a) On or before December 31 of each year, a licensee must file an annual statement which can be obtained from and shall be filed pursuant to Rule .0201(b) of this Subchapter.

(b) The annual statement referenced in Paragraph (a) of this Rule shall be based upon the licensee's operations as of September 30 of each year and shall include the following:

- ~~(1) The the address of the offices each location at which the licensee sells or issues checks in this State and the names name and address of each locations location of the persons agents authorized by the licensee to sell or issue checks in this State;~~
- ~~(2) A Certificate of Continuation of the surety bond required by G.S. 53-198 or evidence of continued compliance with G.S. 53-199(b);~~
- ~~(3) A Certificate of Existence or Certificate of Good Standing from the state of incorporation, where applicable.~~

(c) A licensee is not required to include agents which are exempt by G.S. 53-195.

Statutory Authority G.S. 53-198; 53-199(b); 53-204(a); 53-206.1; 150B-21.2.

.0504 AGENT ACTIVITY REPORTS

A licensee shall file each quarter, ~~for the quarter then ended, of the calendar year, a quarterly report of agent activity no later than 60 days after the quarter has ended, which contains the~~ The quarterly report shall contain the following information:

- (1) ~~The name of each agent total number of agents or subagent subagents in this State; and the address at which he sells or issues checks in this State;~~
- (2) The total number and dollar amount of the checks sold or issued by each agent or subagent in this State.

Statutory Authority G.S. 53-204(a); 53-206.1; 150B-21.2.

.0506 REVOCATION OR CANCELLATION OF SURETY BOND

(a) No later than 30 days after the renewal of its surety bond, a licensee shall file pursuant to Rule .0201(b) of this Subchapter:

- (1) a certificate of continuation of the surety bond required by G.S. 53-198;
- (2) or evidence of continued compliance with G.S. 53-199(b) which shall consist of a safekeeping receipt received directly from the trustee of securities with a par value equal to the amount of the surety bond in G.S. 53-198.

(b) A licensee shall immediately notify the Commissioner in writing of revocation or cancellation of its surety bond furnished pursuant to G.S. 53-198.

Statutory Authority G.S. 53-198; 53-206.1; 150B-21.2.

SUBCHAPTER 3I - MORTGAGE BANKER/BROKER

SECTION .0100 - ADMINISTRATIVE

.0101 DEFINITIONS; FILINGS

(a) As used in these Rules, unless the context clearly requires otherwise:

- (1) Terms defined in G.S. 53-234 shall have the same meaning as set forth therein;
- (2) "Accounting period" shall mean either a period of 12 months (or less in the first year of operations) ending December 31 or a fiscal year of not more than 12 months (or less in the

first year of operations) ending on the last day of any month except December;

- (3) "Advertisement" shall mean material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a registrant whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, billboard or similar display. The term advertisement shall not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded from any definition of advertisement for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures;
- (4) "Application fee" shall mean any fee accepted by a registrant in connection with an application for a mortgage loan including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include a commitment fee, lock-in fee, or third-party fee as such terms are defined in Subparagraphs (a)(12), (19) and (32) of this Rule;
- (5) "Application for a mortgage loan" shall have the same meaning as "Application for a federally-related mortgage loan" in Regulation X;
- (6) "Bonus" shall mean money, or an equivalent, given in addition to usual compensation;
- (7) "Branch manager" shall mean an employee of a registrant who is in charge of, and responsible for, the operations of a registrant's branch office located in this State;
- (8) "Branch office" shall mean any location, including a personal residence, but not the principal place of business, where the registrant holds itself out to the public as engaging in business as a mortgage banker or mortgage broker;
- (9) "Business day" shall have the same meaning as "business day" is defined in

- Regulation X;
- (10) "Certified financial statements" shall mean the statement of financial condition income statement, statement of retained earnings, and statement of cash flows audited by a certified public accountant;
- (11) ~~(10)~~ "Commitment" shall mean an offer to make a mortgage loan, signed, authorized or made by a mortgage banker;
- (12) ~~(11)~~ "Commitment agreement" shall mean a commitment accepted by an applicant for a mortgage loan;
- (13) ~~(12)~~ "Commitment fee" shall mean a fee, exclusive of any third-party fee, imposed by a mortgage banker as consideration for binding it to make a mortgage loan;
- (14) ~~(13)~~ "Controlling person" shall mean any person, as defined herein, who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant;
- (15) ~~(14)~~ "Employee" shall mean any individual performing a service for a registrant for whom the registrant would be liable for withholding taxes pursuant to Title 26 of the United States Code;
- (16) ~~(15)~~ "First-tier subsidiary" shall mean a corporation of which 100% of the stock is directly owned by the parent company;
- (17) ~~(16)~~ "Good faith estimate" shall have the same meaning as "good faith estimate" in Regulation X;
- (18) ~~(17)~~ "HUD" shall mean the United States Department of Housing and Urban Development;
- (19) "Liquid assets" shall mean cash, cash equivalents, or readily convertible instruments. Liquid assets may include cash on hand, checking accounts, savings accounts, certificates of deposits, and unrestricted irrevocable letters of credit;
- (20) ~~(18)~~ "Lock-in agreement" shall mean an agreement between a mortgage banker and an applicant for a mortgage loan which, subject to the terms set forth therein, obligates the mortgage banker to make a mortgage loan at a specified

rate and a specific number of points, if any;

- (21) ~~(19)~~ "Lock-in fee" shall mean points or other fees or discounts accepted by a mortgage broker for transmittal to a mortgage banker or exempt organization or by a mortgage banker as consideration for the making of a lock-in agreement;
- (22) "Net worth" shall mean the owner's equity in a business computed as assets less liabilities. In computing net worth, assets shall not include:
- (A) Assets pledged to secure obligations of another person or entity;
 - (B) Assets due from either officers or stockholders of the registrant or related entities, in which the registrant's, officers or stockholders have a personal interest unrelated to their position as an officer or stockholder of the registrant;
 - (C) Investments in related entities in which the registrant's, officers or stockholders have a personal interest unrelated to their position as an officer or stockholder of the registrant;
 - (D) Investments in joint ventures, subsidiaries, affiliates and/or other entities, or any portion thereof, which is carried at a value greater than the book value on the books of the related entity reduced by the amount of unacceptable assets carried by the related entity;
 - (E) Intangible covenants not to compete, franchisee fees, organization costs, etc.;
 - (F) Assets not readily marketable and for which appraised values are subjective, and carried at a value in excess of a substantially discounted appraised value;
 - (G) Assets used for the personal enjoyment of an officer or stockholder and not for normal business purposes;
 - (H) Marketable securities, or any portion thereof, not shown at the lower of cost or market;
 - (I) Amounts in excess of the lower of cost or market value of mortgages in foreclosures, construction loans, or foreclosed property acquired by the registrant through foreclosure;

- (J) Real estate held for investment where development is not scheduled to begin within two years from the date of acquisition;
- (K) Leasehold improvements not amortized over the lesser of the expected life of the asset or the remaining term of the lease;
- (L) Commitment fees paid/collected which are not recoverable through the closing or selling of loans;
- (23) ~~(20)~~ "Person" shall mean an individual, corporation, partnership, trust, association or other entity;
- (24) ~~(21)~~ "Point" shall mean an origination fee or other fee or discount calculated as 1% of the principal amount of the loan or 1% of the amount financed, however such point may be denominated by the registrant. The term point shall include, but not be limited to, percentage based fees denominated as application fees, mortgage brokerage fees, origination fees, or warehousing fees;
- (25) ~~(22)~~ "Premium" shall be synonymous with "bonus" as defined herein and shall mean money, or an equivalent, given in addition to usual compensation;
- (26) ~~(23)~~ "Premium pricing" shall mean a loan delivered to a lender at an adjusted interest rate that will meet the lender's yield requirements and will enable the broker to receive as its fee the difference between the points delivered to the lender and the fee allotted to the customer;
- (27) ~~(24)~~ "Prevailing rate" shall mean an interest rate on a mortgage loan that is set by a mortgage banker after the issuance of a commitment but prior to or on the closing date. Such rate may be fixed or variable;
- (28) ~~(25)~~ "Principal officer" shall have the same meaning as "executive officer" as defined in Regulation O of the Board of Governors of the Federal Reserve System, codified at 12 CFR Part 215, *et seq.*;
- (29) ~~(26)~~ "Registration of Mortgage Bankers and Brokers Act" shall mean the Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real

Property, codified at Chapter 53, Article 19 of the General Statutes of North Carolina (G.S. 53-233, *et seq.*);

~~(27)~~ "Regulation X" shall mean Regulation X as promulgated by HUD and codified at 24 CFR Part 3500, *et seq.*;

~~(28)~~ "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, *et seq.*;

~~(29)~~ "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, *et seq.*;

~~(30)~~ "Tablefunding" shall mean a transaction in which a registrant closes a loan in its own name with funds provided by others and such loan is assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding;

~~(31)~~ "Settlement cost" shall have the same meaning as "settlement cost" is defined in Regulation X;

~~(32)~~ "Third-party fee" shall mean the fees or charges paid by the applicant for a mortgage loan to the registrant for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges;

~~(33)~~ "Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, *et seq.*

(b) For the purposes of this Subchapter, unless the context clearly requires otherwise, the terms mortgage banker and mortgage broker shall mean a registrant.

(c) Any application for registration or any report, annual statement, amendment to application, notice or other document which is required by law or rule to be filed with the ~~Commissioner shall be addressed as follows:~~ The Commissioner of Banks located at 430 North Salisbury Street, Dobbs Building, Suite 6210, Raleigh, North Carolina 27611. The mailing address is P.O. Box 29512, Raleigh, North Carolina 27626-0512.

Commissioner of Banks
Post Office Box 29512
Raleigh, North Carolina 27626-0512

Statutory Authority G.S. 53-233; 53-234; 53-241.

SECTION .0200 - MINIMUM NET WORTH, LIQUIDITY AND BONDING REQUIREMENTS

.0201 MINIMUM NET WORTH REQUIREMENT FOR MORTGAGE BANKERS

(a) A mortgage banker shall have at all times a net worth of at least two hundred and fifty thousand dollars (\$250,000).

(b) A mortgage banker that engages in tablefunding, but does not engage in any other mortgage banking activity, shall have at all times the same net worth as required for mortgage brokers pursuant to Rule .0202(a) of this Section.

~~(c) Mortgage bankers which are approved for registration by the Commissioner on or after the effective date of this Rule shall have, at a minimum, the net worth set forth herein upon approval. Mortgage bankers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.~~

~~(d) Mortgage bankers which were approved for registration by the Commissioner before the effective date of this Rule shall submit to the Commissioner an audited Statement of Financial Condition (balance sheet) on or before March 31, 1995 which shall verify their financial condition as of the most recently completed accounting period.~~

(c) For any year in which a mortgage banker seeks to rely on the capital of its parent to satisfy the requirements of Paragraph (a) of this Rule, it shall provide to the Commissioner of Banks:

(1) Certified Financial Statements of the parent showing a net worth of at least five-hundred thousand dollars (\$500,000) as of the close of its most recent fiscal year; and

(2) A binding written commitment from the parent to the lender to make a minimum of five-hundred thousand dollars (\$500,000) available to the mortgage banker in connection with its mortgage banking activities.

Statutory Authority G.S. 53-236(b); 53-241.

.0202 MINIMUM NET WORTH

REQUIREMENT FOR MORTGAGE BROKERS

(a) A mortgage broker shall have at all times a net worth of at least twenty-five thousand dollars (\$25,000). However, mortgage brokers which must have a greater net worth to participate in mortgage lending programs sponsored by the federal government or any agency thereof shall at all times maintain the net worth required by the federal government or its agencies.

~~(b) Mortgage brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall have, at a minimum, the net worth set forth herein upon approval. Mortgage brokers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.~~

~~(c) Mortgage brokers which were approved for registration by the Commissioner before the effective date of this Rule shall submit to the Commissioner an audited Statement of Financial Condition (balance sheet) on or before March 31, 1995 which shall verify their financial condition as of the most recently completed accounting period.~~

Statutory Authority G.S. 53-236(b); 53-241.

.0203 LIQUIDITY OF MORTGAGE BANKERS AND BROKERS

(a) All mortgage bankers and brokers shall maintain minimum liquid assets consisting of cash or its equivalent acceptable to the Commissioner in the amount of 20% of their net worth, up to a maximum liquidity of one hundred thousand dollars (\$100,000) of fifty thousand dollars (\$50,000).

~~(b) All mortgage bankers and brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall meet the requirements of this Rule upon approval. Mortgage bankers and brokers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, 1995 to comply with this Rule.~~

(b) All mortgage brokers and mortgage bankers whose only activity is tablefunding shall maintain minimum liquid assets in the amount of five thousand dollars (\$5,000).

Statutory Authority G.S. 53-236(b); 53-241.

.0204 SURETY BOND

(a) All mortgage bankers and brokers shall post a surety bond in the amount of twenty-five

~~thousand dollars (\$25,000) fifty thousand dollars (\$50,000)~~ with the Commissioner which shall run to the benefit of the Commissioner. The bond shall be executed by a company authorized to do business in North Carolina and shall be conditioned upon the obligor's compliance with the provisions of the Registration of Mortgage Bankers and Brokers Act and all Rules adopted thereunder.

(b) All mortgage brokers and mortgage bankers whose only activity is tablefunding shall post a surety bond in the amount of twenty five thousand dollars (\$25,000) with the Commissioner of Banks which shall run to the benefit of the Commissioner. The bond shall be executed by a company authorized to do business in North Carolina and shall be conditioned upon the obligor's compliance with the provisions of the Registration of Mortgage Bankers and Brokers Act and all rules adopted thereunder.

(c) ~~(b)~~ Mortgage bankers, excluding mortgage bankers whose only activity is tablefunding, and brokers which are approved for registration by the Commissioner on or after the effective date of this Rule shall meet the requirements of this Rule upon approval. Mortgage bankers and brokers which were approved for registration by the Commissioner before the effective date of this Rule shall have until January 9, ~~1995~~ 1996 to comply with this Rule.

Statutory Authority G.S. 53-236(b); 53-241.

SECTION .0300 - REGISTRATION OF MORTGAGE BANKERS AND MORTGAGE BROKERS

.0301 APPLICATION FOR REGISTRATION AS A MORTGAGE BANKER OR BROKER

(a) Any person who would like to engage in business as a mortgage banker or mortgage broker pursuant to the Registration of Mortgage Bankers and Brokers Act shall first be registered with the Commissioner. An application shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(c) of this Subchapter.

(b) The application for registration as a mortgage banker or mortgage broker shall include a certified Statement of Financial Condition the following:

- (1) ~~An audited Statement of Financial Condition (balance sheet) of the applicant for the previous accounting period reflecting a minimum net worth and liquidity as required by Section .0200~~

of this Subchapter;

(c) In addition, the application for a mortgage banker or mortgage broker shall include the following:

- (1) ~~(2)~~A surety bond as set forth in Rule .0204 of this Subchapter;
- (2) ~~(3)~~Copies of the following documents, where applicable:
 - (A) The applicant's Articles of Incorporation, or General or Limited Partnership Agreement,
 - (B) A Certificate of Existence or Certificate of Good Standing, not more than 90 days old, from the applicant's state of incorporation,
 - (C) A Certificate of Authority to do business in this State,
 - (D) A copy of the applicant's Certificate of Assumed Name;
- (3) ~~(4)~~Disclosure of any criminal proceedings pending against or criminal convictions entered against the applicant, its partners, directors, principal officers or controlling persons;
- (4) ~~(5)~~Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons which involve fraud or dishonesty;
- (5) ~~(6)~~Disclosure of any civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons during the past 10 years which have remained partially or wholly unpaid;
- (6) ~~(7)~~Disclosure of the following proceedings involving the applicant: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship or similar proceeding;
- (7) ~~(8)~~Disclosure of enforcement proceedings by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, or any other federal or state agency against the applicant, its partners, directors, principal officers or controlling persons which involve licensure or business activities as a mortgage broker or mortgage banker;
- (8) ~~(9)~~A description of the applicant's business operations and organizational structure;
- (9) ~~(10)~~The addresses at which the appli-

cant intends to engage in business as a mortgage banker or broker, including branch offices and the name of the branch manager at each branch office;

- (10) ~~(H)~~A description of the business experience, current business activities and education of the applicant, its partners, directors, principal officers and controlling persons;
- (11) ~~(I)~~Evidence of compliance with the experience requirements set forth in Rules .0303 and .0304 of this Section;
- (12) ~~(J)~~Three business references, including one bank reference;
- (13) ~~(K)~~Where applicable, the names and business addresses of all lenders whom the applicant is authorized to represent and whom the applicant may bind to loan terms. A copy of the agency agreement for each such lender shall be provided.

(d) ~~(e)~~The following fees shall be submitted with the application for registration as a mortgage banker or mortgage broker:

- (1) A nonrefundable application fee made payable to the Commissioner in the amount set forth in G.S. 53-236(b);
- (2) An annual registration fee made payable to the Commissioner in the amount set forth in G.S. 53-242.

(e) ~~(f)~~The application shall be in writing and shall be verified by the oath of the applicant.

(f) ~~(g)~~A person who wishes to engage in business as both a mortgage broker and a mortgage banker shall so state on the application and shall meet all standards for registration as both a mortgage banker and mortgage broker. Such applicant shall submit with its application only one non-refundable fee as set forth in G.S. 53-236(b) and two annual registration fees as set forth in G.S. 53-242.

(g) ~~(h)~~In addition to the documents and information described in Paragraph (b) of this Rule, the Commissioner may require additional information as necessary to make the findings required by G.S. 53-236 and G.S. 53-237.

(h) ~~(i)~~In the event of denial of the application, the Commissioner shall refund in full any annual registration fees paid pursuant to G.S. 53-242.

(i) ~~(j)~~Incomplete application files may be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of request.

Statutory Authority G.S. 53-235; 53-236; 53-

237(a); 53-241; 53-242.

.0306 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION

(a) A Certificate of Registration shall be neither transferable nor assignable.

(b) The circumstances under which the Commissioner shall deem a change in the registrant's organizational structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to, the following:

- (1) If the registrant is a corporation:
 - (A) A change in ownership of ~~50%~~ 25% or more of the registrant's stock;
 - (B) The conversion of the corporation into a general or limited partnership or sole proprietorship;
- (2) If the registrant is a general or limited partnership:
 - (A) A change in one of the registrant's general partners;
 - (B) The conversion of the general partnership into a limited partnership, corporation or sole proprietorship;
 - (C) The conversion of the limited partnership into a general partnership, corporation or sole proprietorship;
- (3) If the registrant is a sole proprietor:
 - (A) The conversion of the sole proprietorship into a general or limited partnership or corporation;
 - (B) The sale of all of the assets of the registrant's business to another person.

(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the Certificate of Registration shall become void and the registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. If the entity which results from the change in the registrant's organizational structure would like to engage in business as a mortgage banker or mortgage broker in this State, it shall apply for a Certificate of Registration pursuant to Rule .0301 of this Section.

Statutory Authority G.S. 53-237(c); 53-241.

SECTION .0400 - OPERATIONS

.0401 ANNUAL REGISTRATION FEE

(a) On or before December 31 of each year, each registrant shall pay the annual fee set forth in G.S. 53-242.

(b) Failure of a registrant to pay the annual fee

within ~~30~~ 31 business days of the date specified in Paragraph (a) of this Rule shall ~~be grounds for revocation of its registration result in the expiration of the registration~~ pursuant to G.S. 53-239(c).

Statutory Authority G.S. 53-239(c); 53-241; 53-242.

.0402 ANNUAL STATEMENT

(a) No later than ~~90~~ 120 days after the end of the registrant's mortgage banker and mortgage broker's accounting period, it shall file ~~an annual statement which shall be obtained from the Commissioner and shall be filed a certified Statement of Financial Condition reflecting a minimum net worth and liquidity as set forth in Section .0200 of this Subchapter~~, pursuant to Rule .0101(c) of this Subchapter.

~~(b) The annual statement referenced in Paragraph (a) of this Rule shall include a Statement of Financial Condition (balance sheet) for the previous accounting period reflecting a minimum net worth and liquidity as set forth in Rules .0201, .0202 and .0203 of this Subchapter.~~

~~(c) If there is any evidence that the Statement of Financial Condition (balance sheet) referenced in Paragraph (b) of this Rule is inaccurate, incomplete or misleading, the Commissioner shall require the registrant to submit an audited Statement of Financial Condition (balance sheet).~~

~~(b)~~ (d) The annual statement required by this Rule shall be in writing and be verified by the oath of the registrant.

~~(c)~~ (e) Failure of a registrant to submit an annual statement in the manner required by this Rule shall be grounds for revocation of its registration pursuant to G.S. 53-239(c).

Statutory Authority G.S. 53-239(c); 53-241.

.0403 SEGREGATION OF FEES

(a) A mortgage broker and a mortgage banker that engages in tablefunding but does not engage in any other mortgage banking activity shall immediately deposit all third-party fees and refundable fees in a segregated account in a federally insured financial institution. The account shall be in the name of the registrant. The account shall be used exclusively for third-party fees and refundable fees, and shall be reconciled monthly.

(b) For purposes of this Rule "immediately" means within seven business days of receipt of the funds.

Statutory Authority G.S. 53-238; 53-241.

.0405 RECORD AND BOOKKEEPING REQUIREMENTS

(a) A registrant shall maintain books and records which shall include, at a minimum, the following:

- (1) A record, such as a cash receipts journal, of all monies received in connection with each mortgage loan showing at least:
 - (A) Identity of payor,
 - (B) Date received,
 - (C) Amount received,
 - (D) Description of the purpose of payment,
 - (E) Identification of the loan to which the receipt relates, if any;
- (2) A sequential listing of checks written for each bank account relating to the registrant's business as a mortgage broker or mortgage banker, such as a cash disbursements journal, showing at least:
 - (A) Payee,
 - (B) Amount,
 - (C) Date,
 - (D) Purpose of payment, including identification of the loan to which it relates, if any;
- (3) A file for each mortgage loan containing:
 - (A) Name of applicant,
 - (B) Date of application,
 - (C) Employee processing the application,
 - (D) Compensation received by registrant,
 - (E) Copies of all agreements or contracts with the applicant including commitment and lock in agreements, where applicable,
 - (F) All contracts, agreements and escrow instructions to or with any depository,
 - (G) Documents showing compliance with applicable State and Federal law, rules and regulations;
- (4) Samples of each piece of advertising relating to the registrant's business of mortgage brokerage or mortgage banking in North Carolina;
- (5) If the registrant is a corporation, general or limited partnership, copies of the following:
 - (A) Articles of Incorporation or General or Limited Partnership Agreement,
 - (B) Corporate or partnership minutes, if required by law,
 - (C) Annual reports, if required by law;
- (6) A monthly reconciliation of the account

referred to in Rule .0403 of this Section.

(b) All records required by Paragraph (a) of this Rule shall be kept for a period of at least three years, and shall be available upon 72 hours notice by the Commissioner. Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner. However, books and records kept in this manner shall be convertible into clearly legible, tangible documents within 72 hours of request by the Commissioner. This time period shall be extended for an additional reasonable time by the Commissioner if the registrant demonstrates to the satisfaction of the Commissioner that it cannot provide the records requested within 72 hours of request.

(c) All records required by Paragraph (a) of this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.

(d) A registrant shall notify the Commissioner of any change in the location of its books and records.

Statutory Authority G.S. 53-238; 53-239; 53-241.

.0406 DISPLAY OF CERTIFICATE OF REGISTRATION

(a) A registrant shall post its Certificate of Registration in plain view of customers at its principal office, each of its branch offices in this State and any branch offices outside of this State at which mortgage loans are originated or made on residential real property as defined in G.S. 53-234(1) and (2).

(b) A registrant shall notify the Commissioner of a change in the name under which it operates or the address of its principal office and any branch office as set forth in Paragraph (a) of this Rule. The notification shall be made at least 30 ~~business~~ days prior to the effective date of such change, shall provide the new name or address and shall be accompanied by a certificate reissuance fee of twenty-five dollars (\$25.00) payable to the Commissioner. Upon receipt of a Certificate of Registration which contains the new address, a registrant shall surrender its former Certificate of Registration to the Commissioner.

Statutory Authority G.S. 53-122(3); 53-234(1); 53-234(2); 53-237(c); 53-241.

SECTION .0500 - REPORTING AND NOTIFICATION REQUIREMENTS

.0501 AMENDMENTS TO APPLICATION

A registrant shall maintain a current application with the Commissioner. If the information contained in the application changes in any material respect, the registrant shall notify the Commissioner within 30 ~~business~~ days of the effective date of such change. Notification to the Commissioner shall be accomplished either by letter or by revision of the applicable pages of the application filed pursuant to Rule .0301 of this Subchapter. If the registrant elects to comply with this Rule by revising its application, it shall obtain the applicable pages of the application from the Commissioner. For the purposes of this Rule, the term "material" shall mean any information which would be likely to influence the granting of a Certificate of Registration. The term "material" shall include information concerning changes in the registrant's corporate officers, partners, or business structure. It shall also include changes in the address of the registrant's main or branch offices and any names under which the registrant operates.

Statutory Authority G.S. 53-241.

.0502 WITHDRAWAL/TERMINATION/REGISTRATION/MTGE BANKER/MTGE BROKER

(a) A registrant shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within ~~three-business~~ seven days of such decision.

(b) A registrant shall surrender its Certificate of Registration to the Commissioner no later than 30 ~~business~~ 15 days after it has ceased operations in this State.

Statutory Authority G.S. 53-241.

.0503 IMPAIRMENT OF MINIMUM NET WORTH, LIQUIDITY OR SURETY BOND

(a) A registrant shall immediately notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth or liquidity requirements of Rules .0201, .0202 or .0203 of this Subchapter.

(b) A registrant shall immediately notify the Commissioner in writing of any cancellation or suspension of the surety bond required by Rule .0204 of this Subchapter.

(c) For the purposes of this Rule, immediately

means within ~~three business~~ seven days of discovery of the failure to meet the minimum net worth, liquidity and bonding requirements of Rules .0201, .0202, .0203, .0204 of this Subchapter.

Statutory Authority G.S. 53-236(b); 53-241.

SECTION .0600 - PROHIBITED ACTS AND PRACTICES; INVESTIGATIONS

.0601 PROHIBITED CONDUCT AND PRACTICES

(a) For the purposes of G.S. 53-238(1) and (2), the terms "material facts," and "material factors, terms or conditions" shall mean any term, fact, factor or condition which is likely to influence, persuade or induce an applicant for a mortgage loan to take a particular action.

(b) For the purposes of G.S. 53-238(6), acts and practices of a registrant which shall be deemed not in "good faith" or "fair dealing" shall include the following:

- (1) The failure to make a good faith effort to issue commitments and effect closing in a timely manner;
- (2) The failure to provide any of the disclosures in the manner and at the times required by this Subchapter;
- (3) The failure to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;
- (4) The conduct of business with ~~an entity which it knows~~ is an unregistered mortgage broker or mortgage banker;
- (5) The acceptance of any fees at closing which were not disclosed in accordance with this Subchapter;
- (6) The failure to provide an accurate loan payoff amount requested by a borrower or an authorized agent in a timely manner.

Statutory Authority G.S. 53-238; 53-241.

.0602 SOLICITATION AND ADVERTISING

(a) A registrant shall not advertise mortgage loan products unless it will make such products available to a reasonable number of qualified applicants responding to the advertisement. Nothing in this Paragraph shall require a registrant to make a loan to an unqualified applicant.

(b) No registrant shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mort-

gage loan in any advertisement. Conduct which shall be deemed fraudulent, deceitful or misleading shall include the following:

- (1) The advertisement of immediate approval of a loan application or immediate closing of a loan;
- (2) The advertisement of a no-point mortgage loan when points are a condition for commitment or closing;
- (3) The advertisement of an intentionally incorrect number of points;
- (4) The advertisement that an applicant will have unqualified access to credit without disclosing material limitations on the availability of credit, such as the percentage of down payment required, that a higher interest rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply;
- (5) The advertisement of a specific time period within which a commitment will be issued unless a commitment will be issued to a qualified applicant within the time period specified;
- (6) The advertisement of a mortgage loan where an interest rate is indicated in the advertisement, unless the advertisement provides that the expressed rate may change or not be available at commitment or closing;
- (7) The advertisement of mortgage loan interest rates that are in violation of State or Federal laws and regulations.

Statutory Authority G.S. 53-238; 53-241.

SECTION .0700 - DISCLOSURE REQUIREMENTS

.0702 MORTGAGE BROKER APPLICATION DISCLOSURES

(a) This Rule shall apply to mortgage brokers and mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.

(b) At or prior to acceptance of the application, application fee or third-party fee, whichever shall occur first, the registrant shall disclose the following information in writing:

- (1) That it does not fund mortgage loans;
- (2) That it cannot guarantee acceptance into any particular loan program, nor can it guarantee any specific loan terms or conditions;

- (3) The amount of the application fee, and the terms or conditions of refund, if any.

(c) Within three business days after the application is received or prepared, the registrant shall disclose the following information in writing by delivering it or placing it in the mail to the loan applicant:

- (1) A good faith estimate of all settlement costs;
- (2) The specific services which will be provided or performed for the application fee and a description of the costs of each service;
- (3) The maximum points or fees of any nature, however denominated, including premium pricing, payable to the registrant by the lender and any fees or points, however denominated, to be paid by the applicant directly to the registrant. In those instances where fees and points are paid from the loan proceeds and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees are costs for obtaining the loan which the borrower may be obligated to repay with interest over the term of the mortgage loan. Alternatively, in those instances where fees and points are paid directly to the registrant at or before closing and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees are costs for obtaining the loan and that they are an addition to the amount which the borrower will actually receive from the loan;
- (4) Any premiums or bonuses to be paid to the registrant by the mortgage banker or exempt organization and the basis of its eligibility to receive premiums or bonuses;
- (5) ~~(d)~~ If applicable, the fact that fees are being divided between more than one mortgage broker, mortgage banker, or exempt organization, or any combination thereof, and the dollar amount or the percentage of such fees. If such fees cannot be determined precisely, a good faith estimate of such fees shall be provided.

- (d) ~~(e)~~ Any third-party fees collected in excess of

the actual cost shall be returned at or prior to closing.

~~(e)~~ ~~(f)~~ Some or all of the disclosures required by Paragraphs ~~(a)~~ ~~(b)~~ and ~~(b)~~ ~~(c)~~ of this Rule may appear on forms used to comply with applicable State and Federal laws, rules or regulations or, at the option of the registrant, may be made as separate disclosures.

~~(f)~~ ~~(g)~~ The registrant shall provide each applicant with a copy of the application upon request. Where both a husband and wife apply jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

~~(g)~~ ~~(h)~~ Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 business days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Statutory Authority G.S. 53-238; 53-241.

.0703 MORTGAGE BANKER APPLICATION DISCLOSURES

(a) This Rule shall not apply to mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.

(b) Prior to the acceptance of an application, application fee or third-party fee, whichever shall occur first, a mortgage banker shall disclose the following in writing:

- (1) The amount of the application fee, if any;
- (2) Whether the application fee or any third-party fee is refundable. For all refundable fees, the mortgage banker shall disclose the terms and conditions of refund.

(c) Within three business days after the application is received or prepared, the mortgage banker shall disclose in writing the mortgage banker's good faith estimate of settlement costs by delivering it or placing it in the mail to the loan applicant.

(d) Any third-party fees collected in excess of their actual cost shall be returned at or prior to closing.

(e) Some or all of the disclosures required by ~~Paragraph~~ Paragraphs ~~(a)~~ ~~(b)~~ and ~~(c)~~ of this Rule may appear on forms used to comply with applicable State or Federal laws, rules or regulations or, at the option of the mortgage banker, may be made as separate disclosures.

(f) A mortgage banker shall provide each applicant with a copy of his application upon request. Where a married couple applies jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

(g) Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 business days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Statutory Authority G.S. 53-238; 53-241.

.0705 COMMITMENT DISCLOSURES

(a) At the issuance of a commitment, or acceptance of a commitment fee, or within three days after the application has been received or prepared, whichever is later, a mortgage banker shall disclose the following information in writing by delivering it or placing it in the mail:

- (1) The following terms and conditions of the commitment:
 - (A) The amount of the commitment fee, if any,
 - (B) Whether the commitment fee is refundable and the terms and conditions of refund,
 - (C) The time during which the commitment is irrevocable and may be accepted by the borrower,
 - (D) The expiration date of the commitment,
 - (E) The amount of fees and charges payable at the time of commitment, if applicable.
- (2) The following terms and conditions of the mortgage loan:
 - (A) Identification of the entity which will fund the loan,
 - (B) Identification of the borrower(s),
 - (C) Identification of the property securing the loan,
 - (D) Principal amount of the loan,
 - (E) Term of the loan,
 - (F) Interest rate of the loan expressed as an annual percentage rate as of the date of closing. The annual percentage rate shall be calculated as provided in the Truth In Lending Act (15 USC 1606) and Regulation Z (12 CFR Part 226.22),
 - (G) Monthly payment of principal and

interest,

- (H) Where applicable, a statement that a balloon payment will be required,
- (I) If the loan is an adjustable rate loan, in addition to the foregoing, the mortgage banker shall disclose the frequency of change, the index, the margin and any relevant caps,
- (J) Where the commitment is a prevailing rate commitment, the index and margin, if any, upon which the rate for the loan will be based,
- (K) Where applicable, a statement that private mortgage insurance will be required,
- (L) Where applicable, a statement that negative amortization may apply,
- (M) Whether and under what conditions the loan is assumable,
- (N) Where applicable, a statement that funds are to be escrowed,
- (O) The total points to be accepted directly or indirectly by or on behalf of the mortgage banker at, prior to or after closing,
- (P) The mortgage banker shall separately identify the points, including premium pricing, payable by the lender to a mortgage broker or a mortgage banker that engages in table funding but does not engage in any other mortgage banking activity. ~~Upon receipt of a copy of the separate fee agreement between the mortgage broker and the applicant, the mortgage banker shall disclose any fees or points to be paid by the applicant directly to the mortgage broker.~~ In instances where mortgage brokerage fees and points are paid from the loan proceeds and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included which states that such points and fees are costs of obtaining the loan which the borrower may be obligated to repay with interest over the term of the loan. Alternatively, in instances where mortgage brokerage fees and points are paid directly to the mortgage broker in full at or before the closing and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included which states that such points

and fees are costs of obtaining the loan and that they are an addition to the amount which the borrower will actually receive for the loan,

- (Q) The mortgage banker shall separately identify any premiums or bonuses to be paid to the mortgage broker or mortgage banker that engages in tablefunding, but does not engage in any other mortgage banking activity,
- (R) No points, however denominated by the mortgage banker, may be required by the mortgage banker as a condition for closing a mortgage loan if they have not been previously disclosed pursuant to this Rule.

(3) All conditions precedent to closing, including the following, if applicable:

- (A) Title report and title insurance,
- (B) Property survey,
- (C) Copy of certificate of occupancy for use,
- (D) Satisfactory final inspection (if new construction),
- (E) Evidence of hazard insurance.

(b) A commitment fee and any points accepted by a mortgage banker prior to closing must be refunded in full if an applicant who has provided complete and correct credit information as required by the application form is rejected as not credit worthy.

(c) In cases where a mortgage broker which is an exclusive agent of the mortgage banker agrees to prepare the Good Faith Estimate of Settlement Costs pursuant to Regulation X, the mortgage banker need not disclose terms and provisions pursuant to Paragraph (a) of this Rule which have already been disclosed on the Good Faith Estimate of Settlement Services.

(d) A mortgage banker shall provide each applicant with a copy of the form or forms which contain items required to be disclosed by this Section. If the applicant is a married couple, the mortgage banker may provide only one copy to either spouse.

(e) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into the commitment or into one or more forms required by State or Federal law, rules and regulations, or such items may be contained in a separate form.

(f) Any additional settlement costs, documents or other items required to close the loan which are found to be necessary after the commitment has been issued shall be disclosed to the applicant in writing within three business days of the discovery

of the need for such items.

Statutory Authority G.S. 53-238; 53-241.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Child Development intends to amend rules cited as 10 NCAC 3U .0302, .0506, .0509, .0601 - .0602, .0604, .0704 - .0705, .0714, .0802 - .0803, .1001, .1402 - .1403, .1717, .2603, .2610 - .2611.

The proposed effective date of this action is July 1, 1995.

The public hearing will be conducted at 1:30 p.m. on February 2, 1995 at the Archives & History/State Library Bldg., 109 East Jones Street, Raleigh, NC 27601.

Reason for Proposed Action:

10 NCAC 3U .0302, .0506, .0509, .0601 - .0602, .0604, .0704 - .0705, .0714, .0802 - .0803, .1402 - .1403, .1717, .2603, .2610 - .2611 - To ensure continued safety to children in child day care settings it is necessary to amend the current day care requirements to strengthen and clarify the rules by defining types of outdoor equipment, materials and training that are necessary for child day care programs and child day care staff.

10 NCAC 3U .1001 - In order to comply with legislation ratified on July 1, 1994 (Chapter 748, Senate Bill 1467, Section 1, GS 20-137.1) it is necessary to amend the child day care requirements.

Comment Procedures: Written comments concerning these amendments may be presented at the hearing, or submitted by February 2, 1995 to the Division of Child Development, PO Box 29553, Raleigh, NC 27626-0553, Attn: Jeanne Marlowe. Oral comments may be presented at the hearing. Length of oral presentations may be limited based on the number of people wishing to speak at the hearing.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3U - CHILD DAY CARE STANDARDS

**SECTION .0300 - PROCEDURES FOR
OBTAINING A LICENSE**

.0302 APPLICATION FOR A LICENSE

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, must apply for a license using the form provided by the section. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator must complete and sign the application.

(b) The applicant is responsible for arranging for inspections of the center by the local sanitarian, building and fire inspectors. The applicant must provide an approved inspection report signed by the appropriate inspector to the section's representative.

(1) A provisional classification may be accepted in accordance with Rule .0401(1) of this Subchapter.

(2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The section chief may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Subchapter.

(c) The applicant is responsible for compliance with all other state laws and local ordinances that apply to the operation of a child day care center.

(d) The applicant, or the person responsible for the day-to-day operation of the center, must be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center will comply with applicable requirements for activities, equipment, and staff/child ratios for the size facility and type of license requested. The applicant shall make the following written information available to the section's representative for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedules,
- (2) activity plans,
- (3) emergency care plan,
- (4) discipline policy,
- (5) injury report,
- (6) injury log.

(7) medication log.

(e) The applicant shall, at a minimum, demonstrate to the section's representative that measures will be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Records on staff which include an application for employment; documentation of previous education, training, and experience; medical and health records; and documentation of participation in training and staff development activities;
- (2) Records on children which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person that conducted the drill;
- (5) Records of monthly playground inspections documented on checklist provided by the Division.

(f) The section's representative shall measure all rooms to be used for day care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The section's representative shall enter the dimensions of each room to be used for day care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(g) The section's representative shall make one or more compliance inspections of the center and premises.

- (1) If the center is in compliance, the representative submits all inspection reports, the floor plan, and any other supporting documents, along with the signed application, to the section for final review and issuance of the license.
- (2) If the center does not comply with the standards in all respects, the representative submits all information listed in (1) of this Paragraph. The representative may recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the section chief.

(h) If the license is denied, the operator may not

apply for a license for that facility for at least 90 days from the date the letter of denial is issued or, if administrative or judicial review is requested by the applicant, from the date the final agency decision or judicial determination is rendered, whichever is later.

Statutory Authority G.S. 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 143B-168.3.

SECTION .0500 - AGE APPROPRIATE ACTIVITIES FOR CENTERS

.0506 WRITTEN SCHEDULE: CENTERS

(a) Centers shall have a schedule for each group of children posted for easy reference by parents and by caregivers.

(b) The schedule shall show blocks of time usually assigned to types of activities and shall include periods of time for both active play and quiet play or rest. Blocks of time shall show activities that are scheduled for indoor and outdoor areas.

(c) The activities and allotted times reflected in the schedule shall be age appropriate for the children in the group.

(d) When children two years old or older are in care, the schedule shall also reflect daily opportunities for both free-choice and teacher-directed activities.

Statutory Authority G.S. 110-91(2),(12); 143B-168.3.

.0509 ACTIVITIES: GENERAL REQUIREMENTS FOR CENTERS

(a) Each center providing care to children aged two years and older shall have equipment and materials available on a daily basis. The equipment and materials shall be appropriate for the ages of the children in care.

(b) The materials shall be sufficient in quantity to provide a variety of play experiences which stimulate the children's social, emotional, intellectual and physical development and the materials shall be easily accessible to the children.

(c) Teacher-made and home-made equipment and materials may be used if they are safe and functional. Materials and equipment that are accessible to children shall not be coated or treated with, nor shall they contain, toxic materials.

(d) Age appropriate equipment and materials shall be provided for a variety of outdoor activities which allow for vigorous play and large muscle development. Each child shall have the opportunity

for outdoor play each day that weather conditions permit. The facility shall provide space and time for vigorous indoor activities when children cannot play outdoors.

Statutory Authority G.S. 110-91(2),(12); 143B-168.3.

SECTION .0600 - SAFETY REQUIREMENTS FOR DAY CARE CENTERS

.0601 SAFE ENVIRONMENT

(a) A safe indoor and outdoor environment shall be provided for the children in care.

(b) All hazardous items, materials and equipment shall be used by children only when adult supervision is provided.

(c) Each day care center shall provide equipment and furnishings that are child-size or which can be adapted for safe and effective use by children. Chairs and tables shall be of proper height for the children who will be using them. Outdoor play equipment shall be age and developmentally appropriate.

(d) Separate play areas or time schedules shall be provided for children under two years of age unless fewer than 15 children are in care. If a facility shares playground space with another facility that serves children, a separate play area or time schedule shall be provided for each facility.

Statutory Authority G.S. 110-85(2); 110-91(3),(6); 143B-168.3.

.0602 CONDITION OF EQUIPMENT AND FURNISHINGS

(a) All equipment and furnishings shall be assembled and installed according to procedures specified by the manufacturer, shall be in good repair and shall be maintained in useable condition.

(b) Equipment and furnishings shall be sturdy, stable, free of sharp edges, lead based paint, loose nails, splinters, protrusions, pinch and crush points, uncapped screws and other hazards that may injure children.

(c) All stationary outdoor equipment must be firmly anchored over a resilient surface. Loose surfacing material shall not be installed over concrete. The depth of the surfacing that is required shall be based on the height of the equipment. The height is determined by the maximum height above ground the piece of equipment can attain, and the maximum height that a child can reach on the equipment. At a minimum, the depth shall equal the amount listed below:

Critical Heights of Playground Equipment for Various Types
and Depths of Resilient Surfaces

	<u>Wood Mulch</u>	<u>Double shredded Bark Mulch</u>	<u>Uniform Wood Chips</u>	<u>Fine Sand</u>	<u>Coarse Sand</u>	<u>Fine Gravel</u>	<u>Medium Gravel</u>
<u>Equipment Height</u>							
<u>four feet or less</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>
<u>five feet</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>
<u>six feet</u>	<u>6 inches</u>	<u>6 inches</u>	<u>6 inches</u>	<u>12 inches</u>	<u>12 inches</u>	<u>6 inches</u>	<u>12 inches</u>
<u>seven feet</u>	<u>6 inches</u>	<u>9 inches</u>	<u>9 inches</u>	<u>12 inches</u>	<u>N/A *</u>	<u>9 inches</u>	<u>N/A *</u>
<u>eight feet</u>	<u>9 inches</u>	<u>9 inches</u>	<u>12 inches</u>	<u>12 inches</u>	<u>N/A *</u>	<u>12 inches</u>	<u>N/A *</u>
<u>nine feet</u>	<u>9 inches</u>	<u>9 inches</u>	<u>12 inches</u>	<u>12 inches</u>	<u>N/A *</u>	<u>12 inches</u>	<u>N/A *</u>
<u>ten feet</u>	<u>9 inches</u>	<u>9 inches</u>	<u>12 inches</u>	<u>N/A *</u>	<u>N/A *</u>	<u>12 inches</u>	<u>N/A *</u>
<u>eleven feet</u>	<u>12 inches</u>	<u>12 inches</u>	<u>12 inches</u>	<u>N/A *</u>	<u>N/A *</u>	<u>N/A *</u>	<u>N/A *</u>

*This type of material is not allowed due to lack of scientific testing of shock-absorbing properties at this height.

Other materials that have been certified by the manufacturer to be shock-absorbing resilient material, may be used only if installed, maintained and replaced according to the manufacturer's instructions. Gravel shall not be used if the area will be used by children under 3 years of age. The surface material shall extend beyond the external limits of the equipment for a minimum of 6 feet. Footings which anchor the equipment shall not be exposed. Appropriate surfacing shall be installed in all facilities by January 1, 1996.

(d) Swings shall have a minimum of 9" of surfacing material that is directly under the swing, and extends 6 feet in front and to the sides of the support structure of the swing.

(d e) All broken equipment or furnishings must be removed from the premises immediately or must be stored so that they are not accessible to the children.

(f) Elevated platforms, used by preschool children, that are more than 20" above the surface shall have a guardrail or impenetrable barrier to prevent falls. Elevated platforms that are more than 30" above the surface shall have a impenetrable barrier which shall prevent a child from climbing through or past it. Elevated platforms, used exclusively by school-aged children, that are more than 30" above the surface shall have a guardrail or impenetrable barrier to prevent falls. Elevated platforms that are more than 48" above the surface shall have a full impenetrable barrier which shall prevent a child from climbing through or past it. All sides of platforms shall be protected except for the area which allows entry or exit.

(g) Any openings in equipment, furnishings, steps and handrails shall be smaller than 3 1/2" or greater than 9", and all angles shall be greater than 55° to prevent entrapment, or shall conform to US Consumer Product Safety Commission (USCPS) guidelines for playground safety, including subsequent amendments. A copy

of the USCPSC's Handbook for Public Playground Safety can be obtained, at no charge, by writing USCPSC, Office of Information and Public Affairs, Washington, DC, 20207.

(h) Equipment ordered or installed prior to January 1, 1996 shall conform to UCPSC guidelines by January 1, 2000. All equipment installed after January 1, 1996 shall conform to USCPSC guidelines.

Statutory Authority G.S. 110-91(6); 143B-168.3.

0604 GENERAL SAFETY REQUIREMENTS

(a) Potentially hazardous items, such as firearms and ammunition, hand and power tools, nails, chemicals, lawn mowers, gasoline or kerosene, archery equipment, propane stoves, whether or not intended for use by children, shall be stored in locked areas or with other appropriate safeguards, or shall be removed from the premises.

(b) Electrical outlets not in use which are located in space used by the children shall be covered with safety plugs unless located behind furniture or equipment that cannot be moved by a child.

(c) Electric fans shall be mounted out of the reach of children or shall be fitted with an appropriate mesh guard to prevent access by children.

(d) All small electrical appliances shall be used only in accordance with the manufacturer's instructions.

(e) Electrical cords shall not be accessible to infants and toddlers. Extension cords, except as approved by the local fire inspector, shall not be used. Frayed or cracked electrical cords shall be replaced.

(f) All materials used for starting fires, such as matches and lighters, shall be kept in locked storage or shall be stored out of the reach of children.

(g) Smoking shall not be permitted in space used by children when children are present. All smoking materials must be kept in locked storage or out of the reach of children.

(h) Fuel burning heaters, fireplaces and floor furnaces shall be provided with a protective screen attached securely to substantial supports to prevent access by children and to prevent objects from being thrown into them.

(i) Plants that are toxic shall not be in indoor or outdoor space that is used by or is accessible to children.

(j) The outdoor play area shall be protected by a fence or other protection which is at a minimum height of 4'. The fencing shall exclude fixed bodies of water such as ditches, quarries, canals, excavations, and fish ponds. The bottom edge of the fence shall be no more than 3 1/2" off the ground. All openings in the fence shall be smaller than 3 1/2". By July 1, 1996 the top of all fences shall be free of protrusions. Gates to the fenced

outdoor play area shall remain securely closed while children occupy the area. When the facility uses areas outside the fenced outdoor play area for children's activities or takes children off the premises for play or outings, the parent of each child shall give written permission for the child to be included in such activities. The permission may be:

- (1) a one-time, blanket permission for all activities;
- (2) a one-time, blanket permission for a specific activity at any time; or
- (3) a one-time permission for a specific activity at a designated time.

The facility shall maintain the signed permission in the child's record. When children are taken off the premises, staff accompanying the children shall have a list of the names of all children participating in the outing.

(k) Air conditioning units shall be located so that they are not accessible to children or shall be fitted with a mesh guard to prevent objects from being thrown into them.

(l) Gas tanks shall be located so they are not accessible to the children or shall be in a protective enclosure or surrounded by a protective guard.

(m) Cribs and playpens shall be placed so that the children occupying them shall not have access to cords or ropes, such as venetian blind cords.

(n) Children shall not be allowed to play on outdoor equipment that is too hot to touch.

(o) The indoor and outdoor premises shall be checked daily for debris, vandalism and broken equipment.

Debris shall be removed and disposed of appropriately.

(p) The playground surface area shall be checked at least weekly to assure that surface material is maintained to assure continued resiliency.

(q) A monthly playground inspection shall be conducted and a record of each inspection shall be completed by a staff person who has received training on playground safety. The staff person shall use a playground inspection checklist provided by the Division. The checklist shall be signed by the person who conducts the inspection and shall be maintained in the facility's files for review

by representatives of the Division.

(r) Swing seats shall be made of plastic or soft or flexible material.

(s) Plastic bags, materials than can be easily torn apart such as Styrofoam and foam rubber, and toys and toy parts small enough to be swallowed shall not be accessible to children under 3 years of age.

Statutory Authority G.S. 110-85(2); 110-91(3),(6); 143B-168.3.

SECTION .0700 - HEALTH AND OTHER STANDARDS FOR CENTER STAFF

.0704 PRESERVICE REQUIREMENTS FOR ADMINISTRATORS

(a) The on-site administrator who has overall responsibility for planning and administering the child care program shall meet the following requirements:

- (1) Be at least 21 years of age, and be literate; and
- (2) Have either a high school or general education diploma; and
- (3) Have completed at least 4 clock hours of training in safety by July 1996. At a minimum the training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment; and
- (4) ~~(3)~~Have two years of full-time verifiable child day care or early childhood experience; or an undergraduate, graduate, or associate degree, with at least 12 semester hours in child development, child psychology, early childhood education or directly related field; or a Child Development Associate Credential; or completion of a community or technical college curriculum program in the area of child care or early childhood; and
- (5) ~~(4)~~Have verification of having successfully completed, or be currently enrolled in, 3 credit hours, or 33 clock hours, of training in the area of child care program administration; or, have one year experience performing administrative responsibilities; or, have one year experience performing administrative responsibilities and have another full-time staff person, who meets (1)

through ~~(4)~~ (3) of this Paragraph who is responsible for planning and implementing the daily program at the center to comply with Sections .0500 and .0600 of this Subchapter.

(b) The administrator of a child day care program who does not routinely work on site, or who is responsible for more than one child day care arrangement, shall have verification of having successfully completed, or be currently enrolled in, 3 credit hours, or 33 clock hours, of training in child care program and administration; or, have one year experience performing administrative responsibilities and have at least one full-time staff person on site at each center who meets the requirements of (1) through (3) of this Paragraph.

(c) Any person who is at least 21 years old and literate who was employed as an on-site administrator in a day care program on or before September 1, 1986, shall be exempt from the provisions of Paragraphs (a) and (b) of this Rule, except all administrators shall meet the provisions in Subparagraph (a)(3) of this Rule.

Statutory Authority G.S. 110-91(8); 143B-168.3.

.0705 SPECIAL TRAINING REQUIREMENTS

(a) At least one staff member shall be knowledgeable of and able to recognize common contagious and infectious diseases.

~~(b) The facility shall have on file verification that there is at least one staff person present at the center at all times children are in care who has successfully completed a course in basic first aid within the last three years. Staff who have successfully completed a course in basic first aid in the last three years shall be present at the facility at all times children are present. The number of staff required to complete the course shall be based on the number of children present in the facility as shown in the following chart:~~

<u>Number of children present</u>	<u>Number of staff required</u>
<u>1 - 29</u>	<u>1 staff</u>
<u>30 - 79</u>	<u>2 staff</u>
<u>80 and above</u>	<u>3 staff</u>

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel file in the facility. The basic first aid course at a minimum shall address principles for responding to emergencies, rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and

stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(c) A first aid information sheet shall be posted in a prominent place for quick referral. Copies of this form may be requested from the Medical Society of the State of North Carolina, P.O. Box 27167, Raleigh, North Carolina, 27611.

(d) At least one person who has a current life saving training certificate, issued by the Red Cross or other issuing entity approved by the Section, appropriate for both the type of body of water and type of aquatic activities shall supervise the children whenever they are participating in swimming or other aquatic activities in or near a swimming pool or other body of water as required in Rule .1403 of this Subchapter.

(e) Each day care facility shall have at least one person on the premises at all times who ~~is certified~~ has current certification by either the American Heart Association or the American Red Cross to perform cardiopulmonary resuscitation appropriate for the ages of children in care.

(f) There shall be at least two staff, including the administrator, who have completed at least four clock hours of training in safety. At a minimum, this training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Each day care facility shall have until July, 1996 for the required number of staff people to obtain this training.

Statutory Authority G.S. 110-91; 143B-168.3.

.0714 OTHER STAFFING REQUIREMENTS

(a) Each day care center shall have an administrator on site on a regular basis. This requirement may be met by having one or more persons on site who meet the requirements for an administrator for the size center being operated according to the following schedule:

- (1) Each small center shall have an administrator on site for at least 20 hours per week.
- (2) Each medium center shall have an administrator on site for at least 25 hours per week.
- (3) Each large center shall have an administrator on site for at least 30 hours per week.

(b) At least one person who meets the requirements for an administrator or teacher as set forth

in this Section shall be on site during the center's operating hours except that a person who is at least 18 years old and literate and who has a minimum of one year's experience working with children in a day care center may be on duty at the beginning or end of the operating day provided that:

- (1) No more than ten children are present.
- (2) The staff person has worked in that center for at least three months.
- (3) The staff person is thoroughly familiar with the center's operating policies and emergency procedures.

(c) At least one person who meets the requirements for a teacher set forth in Rule .0710 of this Section shall be responsible for each group of children as defined in Rule .0102 of this Subchapter except as provided in Paragraph (b) of this Rule.

(d) A teacher aide is a person who is responsible to the teacher and assists with planning and implementing the daily program. An aide shall not have full responsibility for a group of children except as provided in Paragraph (b) of this Rule.

(e) Children shall be supervised at all times. Supervision shall mean visual supervision and interaction with the children while moving about the indoor or outdoor area, with the exception of brief periods necessitated by emergencies ~~and day-to-day child care responsibilities.~~

(f) For groups of children aged two years or older, the staff/child ratio during nap time is considered in compliance if at least one person is either in each room or is visually supervising all the children and if the total number of required staff are on the premises and within calling distance of the rooms occupied by children.

(g) Arrangements shall be made for qualified substitutes or temporary replacements when regular staff are absent. When regular staff fail to report to work or leave work for a reason which cannot be scheduled or planned, such as personal emergencies or illness, the person in charge of the center shall replace the absent staff with a substitute within two hours of the time the regular staff was scheduled to begin work or left work. Supervision of all children as specified in Paragraph (e) of this Rule shall be maintained, even if staff/child ratio and space occupancy requirements must be violated until the substitute arrives. This allowance does not apply to failure to return on time from regular lunch or break times. Notwithstanding the inability to plan or anticipate this situation, centers in which this allowance is used more than three times within a month will lose for three months the right to violate staff/child ratio or

space occupancy requirements in such circumstances without penalty. When this provision is used, the circumstances that required its use shall be documented by the person in charge.

Statutory Authority G.S. 110-91(7), (8); 143B-168.3.

SECTION .0800 - HEALTH STANDARDS FOR CHILDREN

.0802 EMERGENCY MEDICAL CARE

(a) Each day care center shall have a written plan which assures that emergency medical care is available or can be obtained for staff and children. This plan must give the procedures to be followed to assure that any child or staff person who becomes ill or is injured and requires medical attention while at the center, or while participating in any activity provided or sponsored by the center, receives appropriate medical attention. The following information shall be included in the center's emergency medical care plan:

- (1) The name, address, and telephone number of a physician, nurse, physician's assistant, nurse practitioner, community clinic, or local health department that is available to provide medical consultation;
- (2) The name, address, and telephone number of the emergency room to be used when the parents or family physician cannot be reached or when transporting the ill or injured person to the person's preferred hospital could result in serious delay in obtaining medical attention;
- (3) Designation of a means of transportation always available for use in the event of a medical emergency;
- (4) The name of the person, and his or her alternate, at the center, responsible for determining which of the following is needed, carrying out that plan of action, and assuring that appropriate medical care is given:
 - (A) Simple first aid given at the center for an injury or illness needing only minimal attention;
 - (B) Advice from previously identified medical consultant in order to decide if care is to be given at the center or if the ill or injured person is to be transported to a designated medical resource; or

- (C) Immediate transportation of the person to a designated medical resource for appropriate treatment;
- (5) The person at the center who is responsible for:
 - (A) Assuring that the signed authorization described in (c) of this Rule is taken with the ill or injured person to the medical facility;
 - (B) Accompanying the ill or injured person to the medical facility;
 - (C) Notifying a child's parents or emergency contact person about the illness or injury and where the child has been taken for treatment;
 - (D) Notifying the emergency contact person when a staff person becomes ill or is injured to an extent requiring transportation to a medical facility;
 - (E) Notifying the medical facility about the ill or injured person being transported for treatment; and
 - (F) Obtaining substitute staff, if needed, to maintain required staff/child ratio and adequate supervision of children who remain in the center;
- (6) A statement giving the location of the telephone which is in good working condition and is always available for use in case of emergency. A telephone located in an office in the center that is sometimes locked during the time the children are present cannot be designated for use in an emergency.

(b) Emergency medical care information shall be on file for each individual child and staff person. That information shall include the name, address, and telephone number of the parent or other person to be contacted in case of an emergency, the responsible party's choice of health care provider, and preferred hospital; any chronic illness the individual has and any medication taken for that illness; and any other information that has a direct bearing on assuring safe medical treatment for the individual. This emergency medical care information shall be on file in the center on the child's first day of attendance or the staff person's first day of employment.

(c) Each child's parent, legal guardian, or full-time custodian shall sign a statement authorizing the center to obtain medical attention for the child in an emergency. That statement must be on file on the first day the child attends the center. It shall be easily accessible to staff so that it can be taken with the child whenever

emergency medical treatment is necessary.

(d) An injury report shall be completed each time a child sustains an injury other than minor cuts, bruises and scrapes. This injury report shall include, at a minimum: child's name, date and time of injury, part of body injured, type of injury, names of adult witnesses to injury, description of how and where injury occurred, piece of equipment involved (if any), treatment received and steps taken to prevent reoccurrence. This form shall be signed by the person completing it and by the parent, and maintained in the child's file. If medical treatment is required for an injury the child sustains while in day care, a copy of the injury report shall be mailed to the Division within 24 hours after treatment, or the next working day.

(e) Any time a child receives medical treatment as a result of an incident occurring while the child is in day care, the applicable parts of an injury report shall be completed and mailed to the Division within 24 hours of treatment, or the next working day. This could include, for example, if the child receives an incorrect dosage of medicine from a staff person, or gets food poisoning from food eaten at the facility.

(f) An injury log shall be completed any time an injury report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form provided by the Division.

Statutory Authority G.S. 110-91(1),(2),(9); 143B-168.3.

.0803 ADMINISTERING MEDICATION

(a) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication will be administered after its expiration date.

- (1) Prescribed medicine must be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine will be administered only to the person for whom it is prescribed.

- (2) Patent medicines, such as cough syrup, aspirin, or medication for intestinal disorders, shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization must give the child's name, the name of the medicine, dosage instructions, the parent's signature, and the date signed. Patent medicine may also be administered in accordance with instructions from a physician or other authorized health professional.

- (3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.

(b) Any medication remaining after the course of treatment is completed must be returned to the child's parents.

(c) Each facility shall maintain a log of medications or drugs administered by facility personnel to children receiving care. The log shall be completed by the person giving the drug or medication. Noted on the log shall be the following:

- (1) child's name;
- (2) type of drug or medication given;
- (3) time given;
- (4) date given;
- (5) amount given;
- (6) name of person administering; and
- (7) signature of person administering.

A new log shall be completed each week and shall contain the required information for each child who receives a medication or drug. The log may be kept in each individual group or room, or may be kept in one central location.

Statutory Authority G.S. 110-91(1),(2),(9); 143B-168.3.

SECTION .1000 - TRANSPORTATION STANDARDS

.1001 SEAT RESTRAINTS

(a) All day care centers must abide by North Carolina law regulating the use of seat belts and child passenger restraint devices.

(b) All vehicles operated by a day care center

staff person or volunteer, or under contract with a center to transport children, must be properly equipped with seat belts or child restraint devices which ~~met applicable~~ meet federal standards applicable at the time of their manufacture.

(c) Whenever children are transported, each adult and child shall be restrained by an appropriate individual seat belt or restraint device when the vehicle is in motion. Only one person may occupy each seat belt or restraint device.

(d) Each child under ~~three~~ four years of age shall be provided a child passenger restraint device appropriate for the child's size and age. Older children shall use child restraints or seat belts appropriate for their size.

(e) These restraint regulations do not apply to vehicles which are not required by state or federal law to be equipped with seat belts, except that children under one year of age shall never be transported outside an appropriate infant restraint device in any vehicle owned or operated under the auspices of the day care center.

Statutory Authority G.S. 110-91(13); 143B-168.3.

SECTION .1400 - SPACE REQUIREMENTS

.1402 OUTDOOR SPACE

(a) When a center is licensed for six to twenty-nine children, inclusive, there shall be 75 square feet per child outdoor play area for the total number of children for which the center is licensed. In addition, the total number of children on the playground shall not exceed the number the space will accommodate at 75 square feet per child.

(b) When a center is licensed for 30 or more children, there shall be 75 square feet per child of outdoor play area for at least one-half of the total number for which the center is licensed, provided that the minimum amount of space on the outdoor play area must be enough to accommodate at least 30 children.

(c) Paragraphs (a) and (b) of this Rule apply only to child day care centers initially licensed after April 1, 1984.

(d) The outdoor play area shall allow 9 feet of clearance space around fixed play equipment and 15 feet of space around moving parts. Equipment shall be placed so that clearance space allocated to one piece of equipment does not encroach on that of another piece of equipment. Equipment with moving parts, such as swings and merry-go-rounds, shall be located toward the edge or corner of the outdoor play area, or out of the traffic area

of playing children.

(e) The outdoor play area shall provide an area that is shaded by a building, awnings, trees, or other methods.

(f) The outdoor area shall be designed so that staff are able to see and easily supervise the entire area.

Statutory Authority G.S. 110-91(6); 143B-168.3.

.1403 SWIMMING POOLS

(a) ~~Except as provided in Paragraph (b) of this Rule, when~~ When children participate in swimming or other aquatic activities, a person who has a current life guard training saving certificate, issued by the Red Cross or other issuing entity approved by the Section, appropriate for both the type of body of water and type of aquatic activities shall be present to supervise the children in or near the water and shall not be counted in the staff-child ratio. One person with a life guard training certificate is required for each group of 25 or fewer children.

(b) ~~A person with lifeguard certification is not required when there are no more than 12 children present and the body of water has no portion deeper than 30 inches and the total surface area is not more than 400 square feet. The children shall be supervised by at least one adult who is certified to perform cardiopulmonary resuscitation appropriate for the ages of children in care.~~

(b) ~~(e)~~ The staff-child ratios set forth in G.S. 110-91(7) shall be maintained whenever children participate in swimming activities, including swimming instruction.

(c) ~~(d)~~ Any swimming pool deeper than 18 inches which is located on the day care facility center premises shall be enclosed by a fence and must be separated from the remaining outdoor play area by that fence.

(d) Swimming pool safety rules shall be posted near the swimming pool. At a minimum these rules shall address:

- (1) the location of a first-aid kit;
- (2) that non-water toys are prohibited;
- (3) that children shall not run or push one another;
- (4) that no swimming is allowed without an adult present; and
- (5) that glass objects are not allowed.

(f) All swimming pools used by children are required to meet the "Rules Governing Public Swimming Pools", in accordance with 15A NCAC 18A .2500. A copy of these Rules is on file with the Division of Child Development, 319

Chapanoke Road, Raleigh, NC, 27626.

Statutory Authority G.S. 110-88(5); 110-91(1)(6); 143B-168.3.

SECTION .1700 - DAY CARE HOME STANDARDS

.1717 HEALTH, SAFETY AND SANITATION REQUIREMENTS

(a) Each day care home shall comply with the following standards in order to maintain a safe, healthy and sanitary environment for children:

(1) To assure a healthy environment, the operator shall:

(A) have on file, for each child who attends on a regular basis, a health and emergency information form completed and signed by the child's parents or guardian. The completed form must be on file on the first day the child attends. A recommended form is available from the section. However, the operator may use another form provided that form includes the following information:

- (i) the child's name, address, and date of birth;
- (ii) the names of individuals to whom the child may be released;
- (iii) the general status of the child's health;
- (iv) any allergies or restrictions on the child's participation in activities with specific instructions from the child's parent or physician;
- (v) the names and phone numbers of persons to be contacted in an emergency situation;
- (vi) the name and phone number of the child's physician and preferred hospital;
- (vii) authorization for the operator to administer specified medication according to the parent's instructions, if the parent so desires;
- (viii) notarized authorization for the operator to seek emergency medical care in the parent's absence.

(B) serve nutritious meals and snacks appropriate in amount and type of foods served for the ages of the children in care.

(C) provide frequent opportunities for outdoor play or fresh air.

(D) provide adequate and individual space for each child to rest comfortably.

(E) be able to recognize symptoms of childhood illnesses.

(F) provide a quiet, separate area which can be easily supervised for children too sick to remain with other children. Parents must be notified immediately if their child becomes too sick to remain in care.

(G) visually supervise all children who are awake and be able to hear and respond quickly to those children who are sleeping or napping.

(H) have successfully complete completed a basic multimedia first aid course prior to registration within the last three years. The course, at a minimum, shall address principles for responding to emergencies, techniques for rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

(I) have current certification complete a course by the American Heart Association or the American Red Cross in CPR appropriate for the ages of children in care prior to registration.

(2) To assure each child's health and well-being, no child shall be subjected to any form of corporal punishment by the day care home operator, substitute caregiver, or any other person in the home, whether or not these persons reside in the home.

(A) No child shall be handled roughly in any way, including shaking, pushing, shoving, pinching, slapping, biting, kicking, or spanking.

(B) No child shall ever be placed in a locked room, closet, or box.

(C) No discipline shall ever be delegated to another child.

(D) Discipline shall in no way be related to food, rest or toileting.

(i) No food shall be withheld, or given, as a means of discipline.

(ii) No child shall ever be disciplined for lapses in toilet training.

- (iii) No child shall ever be disciplined for not sleeping during rest period.
- (3) To assure a safe environment, the home operator shall:
 - (A) keep all areas used by the children, indoors and outdoors, reasonably clean and orderly and free of items which are potentially hazardous to children. This includes the removal of small items that a child can swallow. In addition, loose nails or screws and splinters must be removed on inside and outside equipment.
 - (B) safely store equipment and supplies such as lawnmowers, power tools, nails, etc. so they are inaccessible to children.
 - (C) ensure that all securely anchor stationary outdoor stationary play equipment is firmly anchored and shall not be installed over a hard surface. Footings which anchor the equipment shall not be exposed.
 - (D) securely mount electric fans out of the reach of children or have a mesh guard on each fan.
 - (E) cover all electrical outlets not in use and remove old, cracked or frayed cords in occupied outlets.
 - (F) separate firearms and ammunition and store both in areas inaccessible to children.
 - (G) keep items used for starting fires, such as matches and lighters, out of the children's reach.
 - (H) keep all medicines in locked storage.
 - (I) keep hazardous cleaning supplies and other items that might be poisonous out of reach or in locked storage when preschool-aged children are in care, e.g., toxic plants.
 - (J) keep first-aid supplies in a place easily accessible to the operator.
 - (K) keep the equipment and toys in good repair and appropriate for the ages of children in care.
 - (L) have a working telephone within close proximity of the day care home. Emergency phone numbers shall be readily available.
 - (M) have access to a means of transportation that is always available for emergency situations.
 - (N) have solid, safe and railed stairs and

- steps if these are used by the children. Indoor stairs with more than two steps shall be guarded if any children in care are two years of age or younger.
- (O) maintain any swimming pools or wading pools on the premises in a manner which will safeguard the lives and health of the children. All swimming pools used by day care children are required to meet the "Rules Governing Public Swimming Pools", in accordance with 15A NCAC 18A .2500. A copy of these Rules is on file at the Division of Child Development, 319 Chapanoke Road, Raleigh, NC 27626.
- (P) enclose any in-ground swimming pools ~~18 inches or deeper~~ by a fence approximately four feet high to prevent chance access by children. The swimming pool shall be separate from the play area. Access to the water in above ground swimming pools must be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to the children.
- (Q) complete a form which explains the operator's procedures in emergency situations. The form shall be supplied by the section.
- (R) practice and maintain records of monthly fire drills giving the date each drill is held, the time of day, and the length of time taken to evacuate the home.
- (S) make all necessary efforts to provide a safe indoor and outdoor environment for the children in care. Animals that are potentially dangerous to children, such as pit bulldogs and rottweilers or other animals determined by the Section to be dangerous, are not permitted on the premises of a day care home.
- (T) complete an injury report each time a child receives an injury, while in care, other than minor cuts, bruises and scrapes. This form shall include, at a minimum; child's name, date and time of injury, part of body injured, type of injury, location where injury occurred, equipment involved in injury (if any), names of adult witnesses to injury, description of how

injury occurred, steps taken to prevent reoccurrence, and treatment received. This form shall be signed by the operator and the parent and maintained in the child's file. If the injury requires medical treatment while the child is at the day care, or because of injuries sustained while at the day care, a copy shall be mailed to the Division within 24 hours after the injury occurs, or the next working day.

- (U) mail an injury report to the Division any time a child receives medical treatment as a result of an incident occurring at the day care home within 24 hours of the treatment, or the next working day. This could include, for example, if the child receives an incorrect dosage of medicine, or gets food poisoning from food eaten at the home.
- (V) complete an injury log any time an injury report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form supplied by the Division.
- (W) complete a monthly check for hazards on the outdoor play area. The form shall be maintained in the day care home for review by the representative of the Division. The form shall be supplied by the Division.
- (X) ensure that all openings on equipment, steps and guardrails that are accessible to children are smaller than 3 1/2" or larger than 9", and have angles greater than 55° to prevent entrapment, or shall conform to current US Consumer Product Safety Commission (USCPSC) standards for playground safety, including subsequent amendments. A copy of the USCPSC's Handbook for Public Playground Safety can be obtained, at no charge, by writing USCPSC, Office of Information and Public Affairs, Washington, DC, 20207.
- (Y) Equipment ordered or installed prior to January 1, 1996 shall conform to USCPSC guidelines by January 1, 2000. All equipment installed after January 1, 1996 shall conform to

USCPSC guidelines.

- (4) To assure the safety of children whenever they are transported, the operator, or any other transportation provider, shall:
 - (A) have written permission from a parent or guardian to transport his or her child and notify the parent when and where the child is to be transported.
 - (B) comply with all applicable state and federal laws and regulations concerning the transportation of passengers. All children regardless of age or location in the vehicle shall be restrained by individual seat belts or child restraint devices.
 - (C) have a valid driver's license issued by the Division of Motor Vehicles, not including a limited permit.
 - (D) assure that each child is seated in a manufacturer's designated area.
 - (E) never leave children in a vehicle unattended by an adult.
 - (F) have emergency and identification information about each child in the vehicle whenever children are being transported.
- (5) To assure a sanitary environment, the operator shall:
 - (A) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services prior to registration and before each renewal. Results of the analysis shall be on file in the home.
 - (B) have sanitary toilet, diaper changing and handwashing facilities.
 - (C) place soiled diapers in a covered, leak-proof container which is emptied and cleaned daily.
 - (D) wash his or her hands before handling food and feeding the children.
 - (E) wash his or her hands before, as well as after, diapering each child.
 - (F) use acceptable sanitary procedures when preparing and serving food.
 - (G) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or

below. A refrigerator thermometer is required to monitor the temperature.

- (H) label all bottles for each individual child, except when there is only one bottle-fed child in care.
- (I) serve only pasteurized milk and milk products.
- (J) have a house that is free of rodents.
- (K) screen all windows and doors used for ventilation.
- (L) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs.
- (M) store garbage in waterproof containers with tight fitting covers.
- (N) provide individual linens for rest time for each child in care for more than four hours. The linens shall be changed weekly or whenever they become soiled or wet.

(b) The operator shall assure that the structure in which the day care home is located complies with the following requirements:

- (1) Comply with Section 509.2 of the North Carolina Building Code or have written approval for use as a day care home by the local building inspector as follows:
- (A) Meet Volume I-B Uniform Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations published by the NC Department of Insurance.

Exception: Single wide manufactured homes will be limited to a maximum of three preschool-aged children (not more than two may be two years of age or less) and two school-aged children.

- (B) All children shall be kept on the ground level with an exit at grade.
- (C) All homes shall be equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery

operated smoke detector located next to each other.

- (D) All homes shall be provided with at least one five lb. 2-A:10-B:C type extinguisher readily accessible for every 2,500 square feet of floor area.
- (E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.
- (2) Assure that all indoor areas used by children are adequately heated in cool weather and ventilated in warm weather.
- (3) Cover or insulate hot pipes or radiators which are accessible to the children.

Statutory Authority G.S. 110-88(3); 110-101; 143B-168.3.

SECTION .2600 - REQUIREMENTS FOR LARGE DAY CARE HOMES

.2603 LICENSING PROCESS

(a) A representative of the section shall make one or more announced visits to the home to determine compliance with the requirements prior to issuance of the initial license.

(b) Before the initial license is issued, the applicant must demonstrate compliance in the following manner:

- (1) The applicant shall submit a completed, signed application to the section.
- (2) The applicant shall make written information available to verify compliance with the requirements for emergency care plans, discipline policy, daily schedules, injury reports, injury logs and a description of activities.
- (3) The applicant shall provide documentation of his or her and any other staff's concurrence with the requirements for staff education and experience, health condition and, if requested, minimum age.
- (4) The applicant shall provide information which demonstrates how compliance will be achieved with the requirements for records of children's health conditions, immunizations, and emergency

information, daily attendance, monthly playground inspections and records of monthly fire drills.

(5) The applicant shall have available or provide a description of the plans to obtain equipment and play materials in sufficient quantity to comply with the requirements for age-appropriate activities.

(6) The applicant shall ensure that approved fire, building and sanitation reports are obtained and provided to the section.

(c) A representative of the section shall measure floor space in the part of the home which is used for day care to assure compliance with the space requirements.

(d) If the large home is found to be in compliance with the applicable requirements of G.S. 110 and this Section, a license shall be issued.

(e) If the large home is not in compliance with the requirements, the section may issue a provisional or a temporary license or may deny the application.

Statutory Authority G.S. 110-88; 110-92; 143B-168.3.

.2610 HEALTH AND EMERGENCY CARE REQUIREMENTS

(a) The large home shall have on file medical statements and records of immunizations for each child in accordance with the provisions of G.S. 110-91(1).

(b) The home shall have the following information in written form for each child in care, including drop-in, part-time and part-day children. The information shall be on file from the first day the child attends and shall be easily accessible to caregiving staff.

(1) The child's full name, date of birth, allergies, if any, any chronic illness the child may have, any medication the child may be taking; and any special fears or behavior characteristics that could affect the child's care.

(2) The names of individuals to whom the child may be released.

(3) Emergency medical care information to include the name, address and telephone number of the parent or other person to contact in an emergency; the name and telephone number of the child's physician; and name of

preferred hospital.

(4) A statement signed by the child's parent or guardian authorizing the home operator to obtain emergency medical attention for the child.

(c) Each large home shall complete a form provided by the section which describes the procedures for obtaining emergency medical care for staff and children. The following information shall be included:

(1) The name, address and telephone number of a physician, other health professional or local health agency which is available to provide medical consultation.

(2) The name and telephone number of the local emergency medical service.

(3) Designation of a means of transportation which is always available in the event of an emergency.

(4) The name, address, and phone number of the person who has agreed to be available to provide emergency relief when the conditions stated in Rule .2607(c) exist.

(d) Each large home shall have a working telephone on the premises which is always accessible to caregiving staff. Telephone numbers for the fire department, law enforcement office, emergency medical service, poison control center and emergency relief person, when required, shall be posted near the telephone.

(e) Administration of medications shall be in accordance with the provisions of Rule .0803.

(f) An injury report shall be completed each time a child sustains an injury other than minor cuts, bruises and scrapes. This injury report shall include, at a minimum: child's name, date and time of injury, part of body injured, type of injury, names of adult witnesses to injury, description of how and where injury occurred, piece of equipment involved (if any), treatment received and steps taken to prevent reoccurrence. This form shall be signed by the person completing it and by the parent, and maintained in the child's file. If medical treatment is required for an injury the child sustains while in day care, a copy of the injury report shall be mailed to the Division within 24 hours after treatment, or the next working day.

(g) Any time a child receives medical treatment as a result of an incident occurring while the child is in day care, the applicable parts of an injury report shall be completed and mailed to the Division within 24 hours of treatment, or the next working day. This could include, for example, if

the child receives an incorrect dosage of medicine from a staff person, or gets food poisoning from food eaten at the facility.

(h) An injury log shall be completed any time an injury report is completed. This log shall be cumulative and maintained in a separate file and shall be available for review by a representative of the Division. This log shall be completed on a form provided by the Division.

Statutory Authority G.S. 110-91(1); 143B-168.3.

.2611 PHYSICAL FACILITY AND SPACE REQUIREMENTS

(a) Each large home shall comply with the North Carolina Building Code requirements for small group day care facilities caring for 6-15 children pursuant to G.S. 110-91(4) and Rule .1303 of this Subchapter.

(b) Each large home shall be inspected prior to the issuance of the initial license and at least annually thereafter by a local fire safety official for compliance with fire safety measures.

(c) Each large home shall be inspected prior to issuance of the initial license and at least annually thereafter by a sanitarian for compliance with appropriate sanitation requirements as codified in Section .1200.

(d) The home shall have at least two remotely located exits directly to the outside.

(e) Firearms and other weapons on the premises shall be secured so that they are inaccessible to the children.

(f) Each large home shall have at least 25 square feet of indoor space for each child for which the home is licensed. The indoor space shall be measured by a representative of the section and shall include only those areas of the home which are routinely made available to the children. The indoor space shall not include closets, bathrooms, storage areas, utility rooms, kitchens or space occupied by furniture or equipment that is not used by the children. The dining area of a kitchen may be counted if it is routinely used for children's activities in addition to eating.

(g) Each large home shall have an outdoor play area which provides at least 75 square feet of play area for each child present. The play area ~~shall be fenced or afford adequate protection by some other means as determined by the section~~ shall provide a shaded area.

(h) The outdoor play area shall be free of equipment, litter, animals and other objects which may be hazardous to children.

(i) The requirements set forth in Rule .1403 for

the use of swimming pools on or off the premises shall apply to large homes.

(j) The requirements relating to hazardous items, materials and equipment as specified in Rule .0601(a), (b), (c) and .0602 of this Subchapter shall apply to large homes.

(k) The requirements relating to safety as specified in Rule .0604 of this Subchapter shall apply to large homes.

Statutory Authority G.S. 110-86(3); 110-91(3),(4),(5),(6); 143B-168.3.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor - Division of Occupational Safety & Health intends to amend rules cited as 13 NCAC 07A .0602 - .0605.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 10:00 a.m. on February 9, 1995 at the OSHA Offices, 319 Chapanoke Road, Suite 105, Raleigh, NC 27603.

Reason for Proposed Action: To make clarifying and technical amendments to the rules for the Safety and Health Programs and Committees established pursuant to G.S. 95, Article 22.

Comment Procedures: Persons wanting to make an oral presentation at the public hearing should provide a written statement of the proposed testimony to the Division three (3) business days prior to the hearing. Written comments will be accepted until February 16, 1995. Direct all correspondence and questions to Jill F. Cramer, NCDOL/OSHA, 319 Chapanoke Rd., Suite 105, Raleigh, NC 27603-3432.

These Rules do not require local or state funds expenditures, however, a fiscal note was submitted to the Fiscal Research Division on December 7, 1994, OSBM on December 7, 1994, N.C. League of Municipalities on December 7, 1994, and N.C. Association of County

Commissioners on December 7, 1994.

CHAPTER 7 - OSHA

**SUBCHAPTER 7A - GENERAL RULES
AND OPERATIONAL PROCEDURES**

**SECTION .0600 - SAFETY AND
HEALTH PROGRAMS AND COMMITTEES**

.0602 DEFINITIONS

- (a) "Fixed location worksite" means any worksite to which an employee regularly reports for at least a consecutive three month period.
- (b) "Near-miss" means any accident or incident at a worksite that does not result in injury, but the potential for serious physical harm exists.
- (c) "FMSHA" means the Federal Mine Safety and Health Act of 1977 [Public Law 95-164].
- (d) "MSHANC" means the Mine Safety and Health Act of North Carolina as contained in North Carolina General Statute 74-24.1 et seq.
- (e) "Mine Safety Laws" means MSHANC and FMSHA and the rules and standards adopted pursuant thereof.
- (f) "OSHANC" means the Occupational Safety and Health Act of North Carolina as contained in North Carolina General Statute 95-126 et seq.
- (g) "Regular location worksite" means a single region or geographic area where employees perform work for one employer.
- (h) "Mobile work crews" means a group of employees of one specific trade (i.e. carpenters, electricians, roofers) who report to various, non-fixed worksites within one geographic area.
- (i) "Multi-employer worksite" means any worksite at which more than one employer has employees reporting to work.
- (j) "Employee leasing company" means a company (or business entity) that assigns employees to work at a client company in an arrangement that employment responsibilities are shared by the employee leasing company and the client company, the employee assignment is intended to be on a continuing, long term basis, and the majority of the work force of the client company worksite consist of leased employees.
- (k) "Client company" means a person or business entity that contracts with an employee leasing company or temporary help service and is provided employees pursuant to that contract.
- (l) "Temporary Help Services" means an employment service that hires its own employees and assigns them to a client company to support or supplement the client company's work force in

special work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(m) "Temporary Employee" means any individual hired to perform temporary help services at a client company.

Statutory Authority G.S. 95-251.

.0603 SAFETY AND HEALTH PROGRAMS

- (a) All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall meet or exceed the requirements of G.S. 95-251(b)(1)-(9).
- (b) The written program shall also include:
 - (1) The manner in which managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and maintained including specifically what the leadership role of the top employer official at the worksite shall be in regard to the program.
 - (2) The manner in which the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls.
 - (3) The manner in which safe work practices and rules will be enforced.
 - (4) The manner in which workplace accidents will be investigated and corrective action implemented. The employer shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.
 - (5) The manner in which near-miss incidents will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The employer shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.
 - (6) The methods used to identify, analyze and control new or existing hazards, conditions and operations, and the manner in which changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.

- (7) Written compliance plans as required by either the Mine Safety laws or OSHA standards, whichever is applicable to the employer. Such written compliance plans should include, including, but not be limited to, Excavations, Hazard Communication, Occupational Noise Exposure, Control of Hazardous Energy Sources (Lockout/Tagout), Respiratory Protection, Process Safety Management of Highly Hazardous Chemicals, Bloodborne Pathogens, Life Safety Code, Cotton Dust, and Confined Spaces.
- (8) A written checklist of all potential hazards to be inspected during the quarterly inspections required pursuant to G.S. 95-252(c)(4)~~(d)~~, if applicable, including, but not limited to, checking for properly marked doors (including exit doors and doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there is no MSDS; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery. Each item on the aforementioned list and any other recognized potential hazard shall be checked during the quarterly inspections and a copy of the list shall be retained by the employer for not less than two years. All conditions or items deemed to be out of compliance shall be immediately abated, unless circumstances beyond the control of the employer requires a longer period of time.
- (9) The employer shall conduct an annual self-audit of all required safety and health programs. Written findings and a statement of remedial actions taken shall be retained for not less than two years. Companies with less than 11 employees which are not required to have safety and health committees shall appoint a company safety officer to conduct the annual self-audit.
- (10) The purpose and operation of the Safety and Health Committee where such committee exists.

- (11) The methods used to communicate requirements of the program to other employers or subcontractors and their employees who may be present at the same site.

Statutory Authority G.S. 95-251.

.0604 SELECTION OF SAFETY COMMITTEES

(a) An employer may elect to implement any one of the following selection processes as a means of meeting the requirements for selection of representatives to employee Safety and Health committees pursuant to G.S. 95-252(d). The employer shall retain written documentation outlining any utilized selection process. An employer whose employees are represented by a collective bargaining representative must utilize either subsection 8, 9, or 10 for committee selection purposes. Any non-management employees who choose not to participate in the collective bargaining process are still considered to be represented by the collective bargaining representative for purposes of this Rule for committee selection purposes.

- (1) The employer may devise and implement any means of employee selection so long as:
 - (A) the employee representatives are selected: "by and from among the employer's non-management employees" as specified in the statute,
 - (B) minimum numbers are met, and
 - (C) the intent of the statute is satisfied.
- (2) The employer may require that all non-management employees serve on a Safety and Health Committee. In the instance of a small employer, there may be one committee comprised of all non-management employees which serves the entire organization. In a larger organization, there may be several committees, each addressing one or more of the responsibilities of the safety committee as outlined in G.S. 95-252, with employees divided among the committees.
- (3) The employer may conduct an election at either a meeting or through the distribution of ballots. The election process shall provide for the nomination by non-management employees (including self-nominations) of non-management employees in the numbers

specified by the employer, but shall not be less than one nor more than the number of non-management members specified by statute. The number of non-management employees specified by statute receiving the most nominations shall serve on the Safety and Health Committee.

- (4) The employer may conduct an employee meeting at which open nominations are held and secret ~~ballot elections are conducted to select~~ ballots are used to elect employee representatives. The meeting may be for all non-management employees or by working unit.
- (5) The employer may conduct an employee meeting at which non-management employees nominate one peer by listing that employee's name on a ballot. The ballots shall be tallied and the appropriate number of representatives, in the numbers required by statute, shall be determined by those employees named on the most ballots.
- (6) The employer may solicit nominations from all non-management employees for employee representatives to serve on the committee, then select representatives by lottery from among those nominated to obtain the statutorily appropriate number of employee representatives for the safety and health committee.
- (7) The employer may solicit volunteers and nominations from among the non-management employees for a pool of applicants to serve as employee representatives on the safety committee. (If no volunteers or nominations are received, the employer shall require that nominations be submitted from a cross section of employee work units within the establishment.) The members of the applicant pool shall select from among its ranks the initial employee representatives necessary to meet minimum numbers as specified in the statute.
- (8) Employees shall be selected to serve on a safety and health committee(s) in accordance with any contract that exists between a collective bargaining unit and the employer. Should the contract not otherwise specify selection of a safety

and health committee, non-management members shall be selected in a manner approved by the certified collective bargaining agent.

- (9) Employers having more than one collective bargaining unit shall devise and implement a means of employee selection utilizing the provisions of the existing contracts or methods approved by the certified collective bargaining agents. Safety committee members shall be selected in proportionate numbers to the number of employees represented by the certified collective bargaining agents.
- (10) Employers having some non-management employees represented by a collective bargaining agent or agents and some not represented shall devise a means that utilizes language in the contract or methods approved by the certified collective bargaining agent(s) for selection of bargaining unit representatives, and one or more of the above means for selecting non-management employee members not represented by the bargaining agent(s). Safety committee members shall be selected in proportion to the number of employees represented by the certified collective bargaining agent(s) and the number of employees not represented.

(b) However initial members of the committee are selected, replacement members may be chosen in accordance with one of the procedures in this Rule, or the committee may be self-perpetuating continue with the same members, as long as the employee representatives are selected ~~"by and from among the employer's non-management employees."~~

(c) Non-management employee representatives shall serve a term of at least one year, and shall not be allowed to succeed themselves in the same position more than once. Terms may be staggered. However, employers with less than 25 employees may allow non-management employee representatives to serve two successive terms.

(d) It shall not be a violation of any part of the statute if an employer has a safety and health program utilizing some other form of employee involvement which has been in operation for more than one year prior to July 15, 1993, and which is submitted for approval and subsequently approved by the Commissioner or his authorized representative, for that program to be used to

satisfy the requirements of Section .0600.

Statutory Authority G.S. 95-252.

.0605 SAFETY & HEALTH COMMITTEE REQUIREMENTS

(a) ~~Employers with employees who do not report to a fixed or regular location worksite, but meet the other requirements of G.S. 95-251 and, if applicable, G.S. 95-252, are required to have a Safety and Health Committee. An employer with mobile work crews shall have at least one committee for each type of crew. However, if 11 or more employees of such an employer also report to a fixed or regular location worksite, then that location must have a separate Safety and Health Committee.~~

(b) ~~Safety and Health Committees shall be established at multi-employer construction worksites if the single prime, general or managing contractor, any other contractor, or subcontractor at the worksite has an experience rate modifier of 1.5 or above. The single prime, general or managing contractor shall be responsible for establishing a Safety and Health Committee for that worksite including representatives from each of the subcontractors working at the site. For construction sites where there is no identified single prime, general or managing contractor, the contractor responsible for expediting construction progress shall be responsible for establishing the Safety and Health Committee.~~

(c) ~~At multi-employer fixed or regular non-construction worksites, each employer with a Safety and Health Committee must notify the other employers present at that worksite of the chairperson(s) of their committees and arrange for the exchange of information on hazards that affect other employers.~~

(a) Multi-Site Employers:

(1) Employers with 11 or more employees who do not report to a fixed or regular location worksite are required to have a Safety and Health Committee to represent those employees. The employer must have a separate Safety and Health Committee for each mobile work crew consisting of 11 or more employees.

(2) Employers with employees who report to a fixed or regular location worksite must have a separate safety and health committee for each location with 11 or more employees.

(b) Multi-Employer Worksites:

(1) At multi-employer fixed or regular non-

construction worksites, each employer required to have a Safety and Health Committee pursuant to G.S. 95-252 must notify the other employers present at that worksite of the chairpersons of their committee(s). Arrangements should be made for the exchange of information on hazards that affect other employees.

(2) A Safety & Health Committee shall be established at multi-employer construction worksites if the single prime, general or managing contractor, or any other contractor or subcontractor at the worksite has an experience rate modifier of 1.5 or above and where the employer(s) with the experience modification rate of 1.5 is under a contractual agreement to perform work at the site or with the single prime, general or managing contractors at multiple sites for at least 3 consecutive months. Employers with successive 3 month contracts are not exempt.

(3) If the conditions of Subparagraph (b)(2) of this Rule are met and the entire worksite does not have 11 or more employees, inclusive of all contractual employees, then no Safety and Health Committee is required.

(4) If the conditions in Subparagraph (b)(2) of this Rule are met and only one employer with an experience rate modifier of 1.5 or above is present and that employer does not have 11 or more employees, then no Safety and Health Committee is required.

Statutory Authority G.S. 95-252.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Coastal Management intends to adopt rule cited as 15A NCAC 7H .0106 and amend 7H .0306.

The proposed effective date of this action is June 1, 1995.

The public hearing will be conducted at 4:00

p.m. on January 26, 1995 at the Holiday Inn, Salter Path Road, Atlantic Beach, NC.

Reason for Proposed Action:

15A NCAC 7H .0106 - To clarify the meaning of terms and phrases within the context of Subchapter 7H.

15A NCAC 7H .0306 - To specify when permits can be issued for increasing the size of structures in the ocean hazard AEC that do not comply with current setback requirements.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than February 2, 1995. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Rich Shaw, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

CHAPTER 7 - COASTAL MANAGEMENT

SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

.0106 GENERAL DEFINITIONS

The following definitions apply whenever these terms are used in this Subchapter:

- (1) "Riparian Access" is the right of a water-front property owner to have access to navigable waters adjoining his or her property subject to the limitations provided by local, state and federal laws and regulations.
- (2) "Public Trust Rights" means those rights held in trust by the State for the use and benefit of the people of the State in common. They are established by common law as interpreted by the courts of this State. They include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's

ocean and estuarine beaches and public access to the beaches.

- (3) "Water Dependent Development" is that development, the primary purpose of which requires direct access to, or location in, Public Trust Areas as defined in 15A NCAC 7H .0207.
- (4) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation which has its distribution influenced by tidal action, and the location of the apparent high tide line.
- (5) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses and barnacles.
- (6) "Navigable" water bodies are sufficiently wide and deep to be passable by commercial or recreational watercraft.

Statutory Authority G.S. 113A-102; 113A-107.

SECTION .0300 - OCEAN HAZARD AREAS

.0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in these Rules shall be located according to whichever of the following rules is applicable.

- (1) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the erosion setback line. The erosion setback line shall be set at a distance of 30 times the long-term annual erosion rate from the first line of stable natural vegetation or measurement line, where applicable. In areas where the rate is less than 2 two feet per year, the setback line shall be 60 feet from the vegetation line or measurement line, where applicable.
- (2) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of

the primary dune or the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located seaward of the primary dune. In such cases, the development shall be located landward of the long-term erosion setback line and shall not be located on or in front of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.

- (3) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the long-term erosion setback line, whichever is farthest from the first line of stable natural vegetation or measurement line, where applicable.
- (4) Because large structures located immediately along the Atlantic Ocean present increased risk of loss of life and property, increased potential for eventual loss or damage to the public beach area and other important natural features along the oceanfront, increased potential for higher public costs for federal flood insurance, erosion control, storm protection, disaster relief and provision of public services such as water and sewer, and increased difficulty and expense of relocation in the event of future shoreline loss, a greater oceanfront setback is required for these structures than is the case with smaller structures. Therefore, in addition to meeting the criteria in this Rule for setback landward of the primary or frontal dune or both the primary and frontal dunes, for all multi-family residential structures (including motels, hotels, condominiums and moteliminiiums) of more than 5,000 square feet total floor area, and

for any non-residential structure with a total area of more than 5,000 square feet, the erosion setback line shall be twice the erosion setback as established in ~~.0306(a)(1)~~ Subparagraph (a)(1) of this Rule, provided that in no case shall this distance be less than 120 feet. In areas where the rate is more than 3.5 feet per year, this setback line shall be set at a distance of 30 times the long-term annual erosion rate plus 105 feet.

- (5) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the principle structure and both must meet the setback requirements established in Paragraph (a) of this Rule and Rule .0309(a) of this Section. The enclosure of existing roof covered porches will be exempt from this requirement if the footprint is not expanded and modifications to existing foundations are not required. New development landward of the applicable setback may be cosmetically, but not structurally, attached to an existing structure that does not conform with current setback requirements.

- (6) (5)Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development will be permitted that involves the significant removal or relocation of primary or frontal dune sand or vegetation thereon. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes shall be allowed only to the extent allowed by Rule .0308(b) of this Section.

(c) In order to avoid excessive public expenditures for maintaining public safety, construction or placement of growth-inducing public facilities to be supported by public funds will be permitted in the ocean hazard area only when such facilities:

- (1) clearly exhibit overriding factors of

national or state interest and public benefit,

- (2) will not increase existing hazards or damage natural buffers,
- (3) will be reasonably safe from flood and erosion related damage,
- (4) will not promote growth and development in ocean hazard areas.

Such facilities include, but are not limited to, sewers, waterlines, roads, and bridges.

(d) Development shall not cause major or irreversible damage to valuable documented historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other reliable sources.

(e) Development shall be consistent with minimum lot size and set back requirements established by local regulations.

(f) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(g) Development shall be consistent with general management objective for ocean hazard areas set forth in Rule .0303 of this Section.

(h) Development shall not create undue interference with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(i) Development proposals shall incorporate all reasonable means and methods to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that will:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(j) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgement from the applicant that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(k) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures

including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located seaward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(l) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under Rule .0308(a)(2) of this Section.

Statutory Authority G.S. 113A-107; 113A-113(b)(6); 113A-124.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0002.

The proposed effective date of this action is July 1, 1995.

The public hearings will be conducted at 7:00 p.m. on:

*January 23, 1995
District 9
Courthouse
Sylva, NC*

*January 24, 1995
District 8
Morganton Civic Center
Auditorium
Morganton, NC*

*January 25, 1995
District 7*

*Elkin High School
Elkin, NC*

*January 30, 1995
District 4
Courthouse
Elizabethtown, NC*

*January 31, 1995
District 5
Courthouse
Graham, NC*

*February 1, 1995
District 6
North Stanly High School
Albemarle, NC*

*February 6, 1995
District 1
Swain Auditorium
Edenton, NC*

*February 7, 1995
District 2
Courthouse
New Bern, NC*

*February 8, 1995
District 3
Courthouse
Nashville, NC*

Reason for Proposed Action: *To improve quality of wildlife habitat on certain game lands by restricting dog training and access.*

Comment Procedures: *Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 3, 1995 through February 4, 1995. Such written comments must be delivered or mailed to the N.C. Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, N.C. 27604-1188.*

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

.0002 GENERAL REGULATIONS

REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (4) Establishment of Archery and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said

device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License:

(1) Hunting and Trapping

(A) Requirement. Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(B) Exceptions

- (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
- (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may

do so without the game lands license.

- (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of fifty dollars (\$50.00) for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any

other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from October 1 through the Sunday immediately preceding the opening of the bear season on any game land located west of I-77 except when participating in field trials sanctioned by the Wildlife Resources Commission.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;

- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on that portion of the Butner-Falls of Neuse Game Lands marked as the Penny Bend Rabbit Research area;
- (6) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (7) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed and maintained for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a special vehicular access identification card and permit issued by the Commission based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands

where this special rule applies will be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all time in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision must prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0003 an individual must have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant must provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness, meaning the inability to hear and/or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife

Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals. It is unlawful to release pen-raised animals or birds, or wild animals or birds on game lands without prior written authorization.

Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Commission for Health Services intends to amend rule cited as 15A NCAC 13A .0012.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground-floor Hearing Room, 512 N. Salisbury Street, Raleigh, N.C.

Reason for Proposed Action: To incorporate by reference federal rules which were promulgated between June 30, 1994 and September 19, 1994, which are needed to remain in compliance with EPA authorization requirements. Amends 15A NCAC 13A .0012 to include 40 CFR 268.38 Waste Specific Provisions and to include 40 CFR 268.48 Universal Treatment Standards (UTS).

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by February 2, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4168. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public

hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESS, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13A - HAZARDOUS WASTE MANAGEMENT

.0012 LAND DISPOSAL

RESTRICTIONS - PART 268

(a) 40 CFR 268.1 through 268.14 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 268.30 through ~~268.37~~ 268.38 (Subpart C), "Prohibitions on Land Disposal", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 268.40 through ~~268.46~~ 268.48 (Subpart D), "Treatment Standards", are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 268.50 (Subpart E), "Prohibitions on Storage", is incorporated by reference including subsequent amendments and editions.

(e) Appendices to 40 CFR Part 268 are incorporated by reference including subsequent amendments and editions.

Statutory Authority G.S. 130A-294(c); 150B-21.6.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNH - Commission for Health

Services intends to amend rules cited as 15A NCAC 16A .0104, .0107, and .0109.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground Floor Hearing Room, Raleigh, NC.

Reason for Proposed Action: The program currently lacks sufficient funds to meet the unmet primary health care needs of the state's migrant farmworker population. Each year the program is forced to close because of depleted funds. Limiting services to primary care and allowing a patient co-payment will allow more eligible persons to be provided services over a longer period of time.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by February 2, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4168. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESS, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES

COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 16 - ADULT HEALTH

SUBCHAPTER 16A - CHRONIC DISEASE

SECTION .0100 - MIGRANT HEALTH

.0104 CO-PAYMENTS

(a) A fee for services provided in the operation of a sponsored migrant health clinic shall be charged on the basis of a schedule of co-payments related to income. Copies of this schedule of co-payments may be inspected at or obtained from the Migrant Health program. No one will be denied service at a sponsored Migrant Health Clinic based solely on an inability or failure to pay.

(b) The Migrant Health Fee-for-Service Program patient co-payment is in accordance with the rules contained in 15A NCAC 24A.

Authority G.S. 130A-223; Sec. 329, Public Health Services Act, 95 Stat. 569 (42 U.S.C. 259B); 42 C.F.R. 56.302(f).

.0107 ELIGIBLE PROVIDERS

~~Primary Care Centers funded directly from Section 329 or 330 of the United States Public Health Service Act, Independent National Health Service Corps sites and local health departments are not eligible for fee for service reimbursement from the Migrant Health Program. All other providers of care may participate in the reimbursement program.~~

Migrant and Community Health Centers funded directly from Section 329 or 330 of the United Public Health Service Act, Independent National Service Corps sites, local health departments and mental health centers are not eligible for fee-for-service reimbursement from the Migrant Health Program. All other providers licensed by the State of North Carolina to provide covered services may participate in the reimbursement program.

Authority G.S. 130A-223; Sec. 329, 95 Stat. 569.

.0109 COVERED SERVICES

~~(a) The Migrant Health Program shall provide reimbursement for the following services provided to migrants that are necessary and essential for their immediate health needs:~~

- (1) ~~ambulatory care services in the form of:~~
(A) ~~physician services; and~~

~~(B) dentist services for basic fluoride applicants, occlusal sealants, routine dental cleaning, tissue debridement, abscess drainage, extractions, surgical extractions, amalgam and composite restorations, but excluding endodontics and cast crowns.~~

~~(2) psychologist's and psychiatrist's professional fees, laboratory tests, diagnostic x-rays, drugs and medications;~~

~~(3) hospital outpatient and emergency room services.~~

~~(b) The Migrant Health Program shall not provide reimbursement for services provided for custodial care.~~

(a) Coverage under the Migrant Health Program includes the following services provided to eligible migrant farmworkers:

(1) Ambulatory care services that are necessary and essential for immediate health needs in the form of:

(A) primary care services;

(B) hospital outpatient and emergency room services;

(C) basic preventive, simple restorative, and simple surgical dental services;

(D) laboratory tests, diagnostic X-rays;

(E) drugs and medications;

(F) mental health services (Limited to two visits per patient per FY);

(G) ground ambulance transportation; and

(H) medical supplies.

(2) The following services will be reviewed on a case-by-case basis and must receive approval from the Program Director before being considered for reimbursement:

(A) home health services;

(B) physical therapy and occupational therapy; and

(C) rental or purchase of durable medical equipment.

(b) Services not covered by the Migrant Health Program include, but are not limited to, the following:

(1) inpatient care, custodial care, hospice care;

(2) any elective procedure;

(3) routine physical exams, routine vision or hearing exams;

(4) eyeglasses or hearing aids;

(5) speech therapy; and

(6) chiropractic therapy.

Statutory Authority G.S. 130A-223.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to adopt rules cited as 15A NCAC 18A .3201 - .3212.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC.

Reason for Proposed Action: To adopt rules governing the practice of tattooing in North Carolina. This action is required by an action of the 1994 General Assembly (House Bill 603).

Comment Procedures: Any person requiring information may contact Dr. J.N. MacCormack, General Communicable Disease Control Section, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-3419. Written comments may be submitted to the above address no later than February 3, 1995. Notice of an oral presentation must be given to the above address at least 3 days prior to the public hearing.

Editor's Note: These Rules were filed as temporary adoptions effective January 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

These Rules affect the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on December 12, 1994, OSBM on December 12, 1994, N.C. League of Municipalities on December 12, 1994, and N.C. Association of County Commissioners on December 12, 1994.

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .3200 - TATTOOING

.3201 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Blood and Body Fluid Precautions" means a method of infection control in which all human blood and body fluids are treated as if known to be infectious for human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other infections that can be transmitted by contact with blood.
- (2) "Department" means the Department of Environment, Health, and Natural Resources. The term also means the authorized agent of the department.
- (3) "Infectious Waste" means a solid waste capable of producing an infectious disease.
- (4) "Sharps" means any objects that can penetrate the skin including, but not limited to, needles, razor blades, scalpels, and broken capillary tubes.
- (5) "Sterilize" means the approved microbicidal treatment by a process which provides enough accumulative heat or concentration of chemicals for a length of time sufficient to eliminate the microbial count, including pathogens.
- (6) "Tattooing" means the inserting of permanent markings or coloration, or the producing of scars, upon or under human skin through puncturing by use of a needle or any other method.
- (7) "Tattoo Artist" means any person who engages in tattooing.
- (8) "Tattoo Establishment" means any room or location where tattooing is engaged in or where the business of tattooing is conducted or any part thereof. For purposes of this Section, "Tattoo Parlor" falls within this definition.
- (9) "Tattooing Room" means a room in the tattoo establishment where tattooing is performed.

Statutory Authority G.S. 130A-29.

.3202 PERMITTING

(a) Every person engaged in the practice of tattooing shall register with their local health department on or before January 1, 1995, by providing their name, the address of the location at which they engage in tattooing, and their hours of operation.

(b) No person shall engage in tattooing on or

after June 1, 1995, without first obtaining a tattooing permit issued by the department. Persons permitted to engage in tattooing in counties with local rules shall obtain a tattooing permit from the department on or after June 1, 1995. Nothing herein shall preclude counties with local rules from permitting tattoo artists prior to June 1, 1995, at which time all tattoo artists shall be permitted by the department.

(c) No tattooing permit shall be issued to a person until an inspection by the department verifies compliance with this Section.

(d) Tattooing permits shall be issued in the name of the individual tattoo artist, shall list the address of the tattoo establishment where the artist will practice, and shall not be transferable to another person or place of practice.

(e) Tattooing permits shall be valid for a period of not more than one year.

(f) A valid tattooing permit shall be posted in the premises of the tattoo establishment in a conspicuous place where it may be easily observed by the public upon entering the establishment.

(g) Application for a tattooing permit shall be submitted to the local health department. The application shall include at least the following information:

- (1) Name of tattoo artist;
- (2) Mailing address of tattoo artist;
- (3) Name of tattoo establishment;
- (4) Street address of tattoo establishment;
and
- (5) Signature of tattoo artist.

(h) Any additional information requested by the department to verify compliance with this Section shall be submitted with the permit application. An initial application for issuance of a tattooing permit shall be submitted no less than 30 days before anticipated commencement of tattooing by the artist within the jurisdiction of the local health department issuing the permit. Application for renewal of an existing tattooing permit shall be submitted to the local health department at least 30 days prior to the expiration date of the existing permit.

(i) Any permit application fee established by the local board of health shall be paid upon submission of the application.

Statutory Authority G.S. 130A-29.

.3203 WATER SUPPLY

(a) The water supply serving a tattoo establishment shall be an approved potable water supply. Public water supplies that meet the requirements of

15A NCAC 18C shall be approved.

(b) When a public water supply is not available and a private water supply is used, the water supply for a tattoo establishment shall be located, constructed, maintained, and operated in accordance with the Rules Governing the Protection of Private Water Supplies, 15A NCAC 18A .1700.

Statutory Authority G.S. 130A-29.

.3204 SEWAGE DISPOSAL

All sewage and other liquid wastes from tattoo establishments shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating sanitary sewage system.

Statutory Authority G.S. 130A-29.

.3205 SOLID WASTE DISPOSAL

Solid waste disposal for tattoo establishments shall be in accordance with 15A NCAC 13B.

Statutory Authority G.S. 130A-29.

.3206 RECORDS, HEALTH REQUIREMENTS FOR PATRONS

(a) Retrievable records for each patron shall be kept by the tattoo artist. The patron shall be required to record or verify their name, address, date of birth, and provide their signature.

(b) Records shall be kept for a minimum of two years and shall be made available to the department on demand.

(c) No person with visible jaundice (yellowing of the eyes or skin) shall be tattooed.

(d) No tattooing shall be done on skin surface that has a rash, pimples, boils, infections, or manifests any evidence of being reddened or inflamed.

Statutory Authority G.S. 130A-29.

.3207 CONSTRUCTION

(a) Each tattoo establishment shall have at least one tattooing room. The tattooing room shall be a separate room with floor to ceiling walls. The tattooing room shall have a door that separates it from the waiting room and all other rooms used for other than tattooing purposes. Patrons shall be tattooed only in the tattooing room. There shall be a separate work station for each patron within the tattooing room. Each work station shall be equipped with a handwash lavatory with a mixing faucet supplied with hot and cold running water

under pressure. Each lavatory shall be easily cleanable, in good repair, and kept free of storage. Furniture and furnishings within the tattooing room shall be constructed to be easily cleanable, maintained in good repair, and kept clean.

(b) When poisons, including germicidal solutions, are used for the maintenance of the tattooing premises, they shall be kept in containers specifically designed for their safe storage.

(c) The floor of the tattooing room shall be of impervious material and shall be maintained in clean condition at all times. The walls and ceiling of the tattooing room shall be maintained clean and in good repair, without flaking or chipping, and shall be smooth and light colored and of such material as to permit thorough cleaning.

Statutory Authority G.S. 130A-29.

.3208 OPERATION AND MAINTENANCE

(a) Antiseptic soap and a germicidal solution shall be available at each work station. Individual hand scrub brushes and fingernail files or orange sticks for each tattoo artist shall also be available at each work station. Before tattooing the first patron of the day, each tattoo artist shall scrub his hands and forearms with an antiseptic soap and warm water for five minutes using a clean individual hand brush and an individual file or orange stick for his fingernails; and he shall repeat this process for two to three minutes before tattooing each subsequent patron that day. An individual disposable towel shall be used for drying the tattoo artist's hands and arms after rinsing. Each tattoo artist shall wear clean disposable latex surgical gloves and a clean or disposable gown or coat or a clean or disposable lap cloth while engaged in tattooing. Gloves must be changed between patrons and disposed of after each use. There shall be no use of tobacco or other smoking materials and no eating of food or drinking of beverages in the tattooing room.

(b) Tattooing instruments and other equipment shall be cared for as follows:

- (1) All clean and ready-to-use instruments, dyes, carbons, and stencils shall be kept in a closed case or storage cabinet while not in use. The storage cabinet shall be maintained in a sanitary manner at all times. Sterile instruments shall be kept in sterile packages or containers;
- (2) Only disposable needles shall be used in the tattooing process, and a new needle or set of needles shall be used on each

patron;

- (3) Autoclaving or another method of heat sterilization approved by the department shall be used for sterilization of the needle bar tube and needle bar of the tattoo machine before use on each patron. The needle bar tube of the tattooing machine shall be cleaned after each use and before being sterilized for use with the next patron;
- (4) The needles and instruments required to be sterile shall be handled with aseptic technique during the tattooing procedure so they are not contaminated before use; and
- (5) The proper functioning of the sterilizing device shall be tested once each month using an impregnated strip that indicates killing of bacteria endospores or another procedure approved by the department. Results of this test shall be recorded for review annually by the department.

(c) All sharps, including the needles after removal from the needle bar, shall be stored and disposed of in rigid, puncture and leak proof containers.

(d) Blood and body fluid precautions shall be practiced by the tattoo artist when the potential for contact with blood and body fluids exists in any procedure.

Statutory Authority G.S. 130A-29.

.3209 TATTOOING PROCEDURES

(a) New disposable razors shall be used for each patron when it is necessary to shave the area to be tattooed.

(b) The site of the tattoo shall be cleaned with soap and hot water for two minutes, rinsed with clean water, and a germicidal solution shall be applied in a circular, centrifugal manner before the design is placed on the skin. If the area to be tattooed is shaved, this cleaning shall be performed after shaving the area. Any other sterile, individual towels or gauze that are used in preparing the site to be tattooed shall be properly disposed of after use on each patron.

(c) Only sterile antimicrobial ointments shall be used on the area to be tattooed and they shall be applied with clean gauze.

(d) The use of styptic pencils, alum blocks, or other solid styptics to control bleeding is prohibited unless a separate, disposable styptic is used for each patron.

(e) If a stencil is used, only clean disposable stencils for transferring the design to the skin shall be used, and no stencil may be used on more than one patron.

(f) Single-service individual containers of dye or ink shall be used for each patron and the container shall be discarded immediately after completing work on a patron. Any dye or ink in which the needles were dipped shall be treated likewise so as not to be used on another person.

(g) After completing the tattoo, the tattooed area shall be washed with clean gauze pads saturated with an approved antiseptic or germicidal soap solution and the gauze shall be discarded as infectious waste. The tattooed area shall be allowed to dry and an antibacterial ointment can be applied with an individual sterile gauze pad which shall be discarded as infectious waste, or the area can be left dry. The area shall then be covered with a sterile gauze dressing.

Statutory Authority G.S. 130A-29.

.3210 INSECT, RODENT AND VECTOR CONTROL

The premises shall be kept clean and free of vermin at all times. There shall be no fly or mosquito breeding places or rodent harborage on the premises. Reptiles, birds, or other domesticated house pets shall not be allowed in the tattooing room. Litter under the control of the tattoo artist or operator shall not be permitted to accumulate on the premises.

Statutory Authority G.S. 130A-29.

.3211 PROCEDURE WHEN INFECTION SUSPECTED

All infections resulting from the practice of tattooing which become known to the tattoo artist shall be reported to the local health department by the tattoo artist.

Statutory Authority G.S. 130A-29.

.3212 PERMIT REVOCATION

The Department may suspend or revoke permits in accordance with G.S. 130A-23.

Statutory Authority G.S. 130A-23; 130A-29.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 19A .0102.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: The Commission for Health Services met on November 4, 1994, and by order of the Wake County Superior Court, reconsidered its denial of a Petition for Rule-making. Notice of the meeting was published in Volume 9, Issue 14 of the North Carolina Register, dated October 14, 1994, at page 1112. The Petitioners and other members of the public were present at the meeting and were allowed to comment on the Petition.

The Petition had requested that the Commission amend 15A NCAC 19A .0102. At its November 4 meeting the Commission affirmed its earlier denial of the Petition but accepted another resolution recommending amendment of the rule. The Commission then passed the temporary rule.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by February 2, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4168. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTER-

ESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESS, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

Editor's Note: This Rule was filed as a temporary amendment effective December 16, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

.0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, the report shall be made to the local health director as follows:

- (1) For diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Rule shall be made within seven days.
- (2) In addition to the requirements of Subparagraph (1) of this Rule, the report shall be made on the communicable disease report card provided by the Division of Epidemiology and shall include the name and address of the patient, the name and address of any minor's parent or guardian, and all other pertinent epidemiologic information.
- (3) Until September 1, 1994 1996, reports of cases of confirmed HIV infection identified by anonymous tests that are conducted at HIV testing sites designat-

ed by the State Health Director pursuant to 15A NCAC 19A .0202(10) shall be made on forms provided by the Department for that purpose. No communicable disease report card shall be required. Effective September 1, 1994 1996, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).

- (4) In addition to the requirements of Subparagraphs (1) and (2) of this Rule, forms provided by the Division of Epidemiology for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the reportable diseases and conditions identified in 15A NCAC 19A .0101(1), (6), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (29), (30), (31), (33), (34), (35), (38), (39), (42), (43), (44), (45), (49), (50), (51), (52), (53), (54), (55), and (57).

- (5) Communicable disease report cards and surveillance forms are available from the Surveillance Unit, N.C. Division of Epidemiology, P.O. Box 27687, Raleigh, N.C. 27611, and from local health departments.

(b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment is required to report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(4) of this Rule.

(c) For the purposes of reporting by restaurants and other food or drink establishments pursuant to G.S. 130A-138, the diseases and conditions to be reported shall be those listed in 15A NCAC 19A .0101 (5), (7), (10), (13), (15), (20), (47), (48), (52), (55), and (56).

(d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:

- (1) The results of the specified tests for

syphilis and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for gonorrhea and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.

- (2) Positive darkfield examinations for syphilis and STS titers of 1:16 and above shall be reported within 24 hours by telephone to the HIV/STD Control Branch at (919) 733-7301, or the HIV/STD Control Branch Regional Office where the laboratory is located.
- (3) Positive tuberculosis test results shall be reported to the Tuberculosis Control Branch on a form provided by the Department within seven days.
- (4) Positive cultures for *E. coli* 0157:H7 shall be reported within 24 hours of isolation to the Communicable Disease Control Section.

Statutory Authority G.S. 130A-134; 130A-135; 130A-138; 130A-139; 130A-141.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rule cited as 15A NCAC 24A .0202.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action: The HIV Mediations Program has sufficient funds to expand its income eligibility scale in order to provide for more low income patients who are not covered by Medicaid or insurance.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at

the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by February 2, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4168. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESS, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0200 - ELIGIBILITY DETERMINATIONS

.0202 DETERMINATION OF FINANCIAL ELIGIBILITY

(a) A patient must meet the financial eligibility requirements of this Subchapter to be eligible for benefits provided by the payment programs. Financial eligibility shall be determined through application of income scales. The definition of annual net income in Rule .0203 of this Subchapter and the definitions of family in Rule .0204 of this Subchapter shall be used in applying the income scales.

(b) A person shall be financially eligible for inpatient services under the Sickle Cell Program,

and for inpatient services under Children's Special Health Services if the person is age 8-20 if the net family income is at or below the following scale: Family Size 1: \$4,200; Family Size 2: \$5,300; Family Size 3: \$6,400; Family Size 4: \$7,500; Family Size 5 and over: add \$500 per family member.

(c) A person shall be financially eligible for the Cancer Program, for outpatient services under the Sickle Cell Program, for outpatient services under Children's Special Health Services, and for inpatient services under Children's Special Health Services if the person is age 0-7, if the net family income is at or below the federal poverty level in effect on July 1 of each fiscal year.

(d) A person shall be financially eligible for the HIV Medications Program if the net family income is at or below ~~85~~ 110 percent of the federal poverty level in effect on ~~April~~ July 1 of each fiscal year.

(e) A person shall be financially eligible for the Kidney Program if the net family income is at or below the following scale: Family Size 1: \$6,400; Family Size 2: \$8,000; Family Size 3: \$9,600; Family Size 4: \$11,000; Family Size 5: \$12,000; Family Size 6 and over: add \$800 per family member.

(f) The financial eligibility requirements of this Subchapter shall not apply to:

- (1) Migrant Health Program;
- (2) Children's Special Health Services when the requirements of 15A NCAC 21F .0800 are met;
- (3) School Health Program financial eligibility determinations performed by a local health department which has chosen to use the financial eligibility standards of the Department of Public Instruction's free lunch program;
- (4) Prenatal outpatient services sponsored through local health department delivery funds, 15A NCAC 21C .0200; or through Perinatal Program high risk maternity clinic reimbursement funds, 15A NCAC 21C .0300;
- (5) Diagnostic assessments for infants up to 12 months of age with sickle cell syndrome.

(g) Except as provided in Paragraph (h) of this Rule, once an individual is determined financially eligible for payment program benefits, the individual shall remain financially eligible for a period of one year after the date of application for financial eligibility unless there is a change in the individual's family size pursuant to Rule .0204 of

this Subchapter or his family's financial resources or expenses during that period. If there is a change, financial eligibility for payment program benefits must be redetermined. Financial eligibility must be redetermined at least once a year.

(h) For purposes of the Kidney Program and HIV Medications Program, once an individual is determined to be financially eligible, if the application for financial eligibility was received by the Department in the fourth quarter of the fiscal year, the individual shall remain financially eligible for benefits until the end of the next fiscal year unless there is a change in the individual's family size pursuant to Rule .0204 of this Subchapter or his family's financial resources or expenses during that period.

(i) If the most current financial eligibility form on file with the Department shows that the patient was financially eligible on the date an Authorization Request for payment for drugs was received, the Authorization Request may be approved so long as the Authorization Request is received less than 30 days prior to the expiration of financial eligibility and the authorized service does not extend more than 30 days after the expiration of financial eligibility.

Statutory Authority G.S. 130A-4.2; 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-205.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 24A .0403 and .0405.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 1:30 p.m. on January 26, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

Reason for Proposed Action:

15A NCAC 24A .0403 - Currently the Migrant Health Program lacks sufficient funds to meet the health care needs of the state's migrant farm-worker population. Each year the program is forced to close because of insufficient funds. Limiting reimbursement to a maximum of \$150.00

per claim will allow the program to remain open approximately six weeks longer and serve more patients during the budget year. Establishing a patient copayment will make the migrant patient responsible for participating in the cost of his care.

15A NCAC 24A .0405 - Currently an amendment to 15A NCAC 24A .0403 is being proposed to limit Migrant Health Program reimbursement to a maximum payment of \$150.00 per claim and to establish a patient copayment. This amendment is being proposed to create an exception to the requirement that if a provider has accepted partial or total payment from the Department for particular services, the Department's reimbursement rate for those services shall be considered payment in full. This will allow the provider to collect the copayment.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by February 2, 1995. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4168. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESS, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 24 - GENERAL PROCEDURES FOR PUBLIC HEALTH PROGRAMS

SUBCHAPTER 24A - PAYMENT PROGRAMS

SECTION .0400 - REIMBURSEMENT

.0403 REIMBURSEMENT FOR PROFESSIONAL, OUTPATIENT, OTHER SERVICES

(a) The Department shall reimburse providers of authorized outpatient services, professional services, and all other services not otherwise covered in the rules of this Section at the Medicaid rate in effect at the time the claim is received by the Department, except in the Migrant Health Program.

(b) ~~The Department shall reimburse providers of authorized outpatient hospital services under the Migrant Health Program at 80 percent of the Medicaid rate in effect at the time the claim is received by the Department. The Migrant Health Program shall reimburse providers of authorized outpatient, professional, and other services the Medicaid rate in effect at the time the claim is received minus the allowable patient copayment to a maximum program payment of one hundred fifty dollars (\$150.00) per claim, per date of service. The allowable patient copayment is three dollars (\$3.00) for each prescribed drug and five dollars (\$5.00) per claim, per date of service for all other services. The one hundred fifty dollar (\$150.00) limit shall not apply to drugs, medical supplies, and durable medical equipment.~~

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205; 130A-223.

.0405 BILLING THE PATIENT PROHIBITED

If a provider has accepted partial or total payment from the Department for particular services, the Department's reimbursement rate for those services shall be considered payment in full for those authorized services for all payment programs except the Maternal and Child Health Program Delivery Fund and the School Health Fund, and the Migrant Health Program. A provider who has accepted partial or total payment from the Department under the Maternal and Child Health Delivery Fund or the School Health Fund shall not bill the patient or his family for any amount greater than the amount by which the Medicaid rate

exceeds the Department's payment for the particular services. A provider who has accepted payment from the Department under the Migrant Health Program may bill the patient for co-payments defined in the rules of this Section.

Statutory Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129; 130A-177; 130A-205.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6A .0002, 6E .0202; repeal 6A .0003 and adopt 6D .0401 - .0402. Rule 16 NCAC 2E .0202 also has amendments shown in italic print. These amendments were proposed in the Register (9:6 NCR 375) and were approved by Rules Review Commission on December 15, 1994 to be effective on July 1, 1995.

*The proposed effective date of this action is:
16 NCAC 6A .0002 - .0003, 6D .0401 - .0402 -
July 1, 1995.
16 NCAC 6E .0202 - May 1, 1995.*

The public hearings will be conducted at:

9:00 a.m.
16 NCAC 6A .0002

9:30 a.m.
16 NCAC 6A .0003

10:00 a.m.
16 NCAC 6D .0401 - .0402

11:00 a.m.
16 NCAC 6E .0202

on February 3, 1995 at the Education Building,
301 N. Wilmington Street, Room 224, Raleigh,
NC, 27601-2825.

Reason for Proposed Action:

16 NCAC 6A .0002 - Change is needed to conform rule more nearly with the direction of the statute, as recommended by Attorney General.

16 NCAC 6A .0003 - Repeal is needed following opinion of Attorney General that agency lacks

authority to implement the rule.

16 NCAC 6D .0401 - .0402 - Rules define support programs required under Basic Education Program and provide definition and delivery process for special health care services.

16 NCAC 6E .0202 - Amendments are needed to conform physical requirement with current medical practices and to provide a means for acting on waiver requests for eligibility requirements.

Comment Procedures: Any interested person may present comments in writing before or at the hearing or orally at the hearing.

Editor's Note: Rule 16 NCAC 6E .0202 was filed as a temporary rule effective December 27, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. Codifier of Rules objected to the Findings of Need for the Temporary Rule on December 9, 1994.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6A - ORGANIZATION PLAN

.0002 SUSPENSION OF A PORTION OF THE SCHOOL TERM

(a) The SBE will consider requests from LEAs to suspend a portion of the school term for one or more schools due to severe hazardous weather conditions, natural disaster, or other emergency only when the following conditions have been met:

- (1) the request must be by resolution of the LEA, documenting that every effort has been made to insure the opportunity for 180 days of instruction for all students in compliance with G.S. 115C-84(c), specifying the efforts which have been made to enable the students to make up lost work and setting forth the adjustments, if any, which have been made in bus routes and bus driver assignments to assist in keeping schools open and operating to the maximum degree consistent with policy;
- (2) the LEA must demonstrate that 15 days lost due to hazardous weather conditions, natural disaster, or other emergency have been made up within the framework of the 10-month school calendar before any suspension of the

- (3) school term occurs;
the requested suspension will provide no less than 175 days of instruction or the request for suspension must be accompanied by a request for an appropriate number of days of school operation beyond the 10-month term to be funded from the Public School Fund to assure that no less than 175 days of instruction are available to every student in the administrative unit.

(b) The SBE will, within funds available to it, allocate additional funds to insure that every child has the opportunity to attend school for no less than 175 days.

- (1) LEAS must request these funds in accordance with the procedures of Paragraph (a) of this Rule.
- (2) Funds provided for this purpose are for additional days of school operation beyond the 10 months of employment contained in the basic school calendar. In no event may additional days of employment extend beyond the end of the fiscal year.
- (3) Additional days of employment for all school employees resulting from funds allocated under this Rule are a separate contract period and are not a part of the regular contract period.

Authority G.S. 115C-36; 115C-47(11); 115C-84(c); N.C. Constitution, Article IX, Sec. 5.

.0003 EMERGENCY CLOSING OF INDIVIDUAL SCHOOLS

~~If an individual school within an administrative unit is closed on account of emergency conditions that might be threatening to the health, safety, and welfare of students and staff, the LEA may petition the SBE to suspend the day or days from the 180 day school term without loss of credit to students or pay to staff, regardless of the status of school closings and make up days for the administrative unit as a whole.~~

Authority G.S. 115C-84(c); N.C. Constitution, Article IX, Sec. 5.

SUBCHAPTER 6D - INSTRUCTION

SECTION .0400 - BEP SUPPORT SERVICES

.0401 REQUIRED SUPPORT PROGRAMS

Each LEA must provide its students support services in the following areas:

- (1) Pre-school physical and developmental screening;
- (2) School counseling services;
- (3) School social work services;
- (4) School psychological services; and
- (5) Health services.

Statutory Authority 115C-12(9)c.; 115C-81.

.0402 SPECIAL HEALTH CARE SERVICES

(a) Each LEA shall make available a registered nurse for assessment, care planning, and on-going evaluation of students with special health care service needs in the school setting. Special health care services include procedures that are invasive, carry reasonable risk of harm if not performed correctly, may not have a predictable outcome, or may require additional action based on results of testing or monitoring.

(b) Care planning includes but is not limited to:

- (1) identification of appropriate person(s) to perform the procedure;
- (2) teaching those persons to perform the procedure; and
- (3) identification of a mechanism for registered nurses or other persons qualified by state law to plan and implement such health to provide ongoing supervision to ensure the procedure is performed appropriately and monitoring the student's response to care provided in the school setting.

(c) To assure that these services are provided, LEAs have the flexibility to hire registered nurses, to contract with individual registered nurses, to contract for nursing services through local health departments, home care organizations, hospitals and other providers, or to negotiate coverage for planning and implementing these services with the licensed physician, nurse practitioner, or physician assistant prescribing the health care procedure.

(d) LEAs shall implement this Rule in compliance with the provisions of G.S. 115C-307(c).

Statutory Authority 115C-12(9)c.; 115C-81; 115C-307(c).

SUBCHAPTER 6E - STUDENTS

SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

.0202 INTERSCHOLASTIC ATHLETICS

(a) Only students in grades 7-12 may participate in interscholastic athletic competition. In order to qualify for public school participation, a student must meet the following requirements:

- (1) The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA or, if over the age requirements, the school to which the student would be assigned at the next higher grade level.
- (2) The student must meet age requirements at each grade level to participate. The principal must have evidence of the legal birth date of the student. ~~The age limits for students as of October 16 of each year are: A student who is ineligible to participate at one grade level due to age is eligible to participate at the next higher grade level only. However, no student may participate at the high school level for a period lasting more than eight consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first.~~
 - (A) ~~no older than age 18 for high school~~ A student is eligible to participate in high school athletic contests during a school year if the student does not reach the 19th birthday on or before October 16 of that school year.
 - (B) ~~no older than age 16 for ninth grade or junior high; and A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before October 16 of that school year.~~
 - (C) ~~no older than age 15 for seventh or eighth grade~~ A student shall not participate on a seventh or eighth grade team if the student becomes 15 years of age on or before October 16 of that school year.
- (3) In grades 9-12, the student must pass at least five courses each semester and meet promotion standards established by the LEA. In grades 7 and 8, the student must meet state and local promotion standards and maintain passing grades each semester. Regardless of the school organization

pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.

- (4) The student must receive a medical examination ~~by a licensed medical doctor~~ each year (365 days) by a duly licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.
- (5) The student may not participate after any of the following:
 - (A) graduation;
 - (B) becoming eligible to graduate;
 - (C) signing a professional athletic contract;
 - (D) receiving remuneration as a participant in an athletic contest; or
 - (E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.
- ~~(6) A high school student may participate only during the eight consecutive semesters beginning with the student's first entry into grade nine.~~
 - (b) Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport.
 - (c) Any student-athlete, coach or school official in grades 7 -12 who is ejected from any athletic contest shall be penalized as follows:
 - (1) for the first offense, the person shall be reprimanded and suspended for the next game at that level of play (varsity or junior varsity) and for any intervening games at either level;
 - (2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level;
 - (3) for a third offense, the person shall be suspended for one calendar year;
 - (4) a coach who is suspended at any level of grades 7-12 (middle school, junior high or high school) may not coach in any other grade level in grades 7-12 during the period of suspension;
 - (5) penalties are cumulative from sport to sport and from sport season to sport

season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(d) LEAs may allow their schools to belong to ~~statewide athletic association as long as the association establishes at the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE. The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student. The NCHSAA may enforce penalties for the violation of this Rule at the high school level.~~

(e) The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels.

(f) ~~The North Carolina High School Athletic Association (NCHSAA) may enforce penalties for the violation of this Rule at the high school level.~~

Statutory Authority G.S. 115C-47(4).

TITLE 21 - OCCUPATIONAL LICENSING BOARD

CHAPTER 54 - BOARD OF PRACTICING PSYCHOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Psychology Board intends to adopt rules cited as 21 NCAC 54 .2704 - .2706.

The proposed effective date of this action is May 1, 1995.

The public hearing will be conducted at 10:00 a.m. on February 16, 1995 at the Howard Johnson Plaza Hotel, I-40 at Guilford-Jamestown Road, Greensboro, NC.

Reason for Proposed Action: Per statutory requirement, set requirements for health services provider certification for those individuals applying after June 30, 1994.

Comment Procedures: Comments may be submitted in writing or in person at the public hearing or

in writing prior to February 17, 1995 to Martha Storie, Executive Director, N.C. Psychology Board, 895 State Farm Road, Suite 102, Boone, NC 28607.

Editor's Note: *These Rules were filed as temporary adoptions effective December 19, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.*

SECTION .2700 - HEALTH SERVICES PROVIDERS CERTIFICATION

.2704 HSP-P REQUIREMENTS ON AND AFTER JUNE 30, 1994

(a) A licensed psychologist holding permanent North Carolina licensure must be qualified by education and supervised experience to be certified as a health services provider psychologist (HSP-P). The applicant must provide documentation that verifies meeting the criteria specified in either Subparagraph (a)(1) or in Subparagraphs (a)(2) and (a)(3) of this Rule.

(1) The applicant must be qualified for, or be listed in, the National Register of Health Service Providers in Psychology. Register requirements may be obtained by writing to The National Register of Health Service Providers in Psychology, 1120 G Street NW, Suite 330, Washington, DC 20005, or by telephoning (202) 783-7663.

(2) The applicant must have received a doctoral degree from an American Psychological Association accredited program in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology which included an American Psychological Association accredited internship in a health services setting. The doctoral program must be one which was fully accredited by the American Psychological Association at the time of the applicant's graduation from the program.

(3) The applicant must have at least two years of supervised experience in a health services setting. Completion of an American Psychological Association approved internship in a health services setting will count toward meeting one year of this requirement. The postdoc-

total year must consist of a minimum of 1500 hours of supervised experience completed within a consecutive four-year period. This experience must occur after all requirements of the doctoral program are completed. The following criteria must be met:

- (A) The supervision must be for the direct provision of health services in psychology by the applicant to individuals or groups of clients/patients.
- (B) At least one hour per week of formal, face-to-face, individual supervision must have been provided.
- (C) The supervisor must have been an appropriately licensed/certified psychologist, whose license/certificate was in good standing, in the state where the practice occurred.
- (D) The supervisor, at the time of supervision, must not have been in a dual relationship with the supervisee, e.g., spouse, other close relative, close personal friend, or therapist.

(b) Applicants must submit the following documentation which attests to compliance with the requirements specified in Paragraph (a) of this Rule:

- (1) for all applicants, a completed, notarized application form provided by the Board and payment of the fifty dollars (\$50.00) fee;
- (2) for applicants applying under Subparagraph (a)(1) of this Rule, and who have already been approved for listing, or are listed in the National Register of Health Service Providers in Psychology, a letter from the Register which verifies such;
- (3) for applicants not yet licensed in North Carolina at the permanent Licensed Psychologist level applying under Subparagraph (a)(1) of this Rule, and who have not yet been approved for listing in the National Register of Health Service Providers in Psychology, an affidavit verifying that he/she qualifies for listing in the Register. Upon receipt of this affidavit, the Board may issue an HSP-P certificate in conjunction with the license, conditioned upon receipt of a letter from the Register within 60 days of licensure at the permanent Licensed

- (4) Psychologist level, which confirms approval for, or listing in, the Register; for applicants already licensed in North Carolina at the permanent Licensed Psychologist level applying under Subparagraph (a)(1) of this Rule, and who have not yet been approved for listing in the National Register of Health Service Providers in Psychology, an affidavit verifying that he/she qualifies for listing in the Register. Upon receipt of this affidavit, the Board may issue an HSP-P certificate, conditioned upon receipt of a letter from the Register within 60 days of the date of application for HSP-P certification, which confirms approval for, or listing in, the Register; for applicants applying under Subparagraphs (a)(2) and (a)(3) of this Rule:

- (A) a letter from the applicant's doctoral program head which verifies that the applicant received a doctoral degree from an American Psychological Association accredited program in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology;
- (B) a letter from the applicant's internship site training director which verifies that the applicant successfully completed an American Psychological Association accredited internship in a health services setting; and
- (C) proof of the required postdoctoral supervised experience specified in Subparagraph (a)(3) of this Rule.

(c) Any applicant for HSP-P certification who provides false or fraudulent information to the Board with respect to his/her application, or who fails to provide the notification from the National Register of Health Service Providers in Psychology where required, shall be subject to disciplinary action by the Board, including revocation of the HSP-P certificate.

Statutory Authority G.S. 90-270.9; 90-270.15(a)(3); 90-270.15(a)(22); 90-270.20(b).

.2705 HSP-PP REQUIREMENTS

(a) A North Carolina provisional licensed psychologist must provide documentation which verifies that he/she is qualified by education to be

certified as a health services provider psychologist (provisional) (HSP-PP). The applicant must hold a doctoral degree from an American Psychological Association accredited program in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology which included an American Psychological Association approved internship in a health services setting. The doctoral program must be one which was fully accredited by the American Psychological Association at the time of the applicant's graduation from the program.

(b) All applicants must submit the following documentation which attests to compliance with the requirements specified in Paragraph (a) of this Rule:

- (1) a completed, notarized application form provided by the Board and payment of the fifty dollars (\$50.00) fee;
- (2) a letter from the applicant's doctoral program head which verifies that the applicant received a doctoral degree from an American Psychological Association accredited program in Clinical Psychology, Counseling Psychology, School Psychology, or Combined Professional-Scientific Psychology; and
- (3) a letter from the applicant's internship site training director, which verifies that the applicant successfully completed an American Psychological Association accredited internship in a health services setting.

Statutory Authority G.S. 90-270.9; 90-270.20(d).

.2706 HSP-PA REQUIREMENTS ON AND AFTER JUNE 30, 1994

A North Carolina licensed psychological associate must provide documentation which verifies that he/she is qualified by education to be certified as a health services provider psychological associate (HSP-PA). The applicant must hold a master's, specialist, or doctoral degree in clinical psychology, counseling psychology, school psychology, rehabilitation psychology, neuropsychology, health psychology, or applied developmental psychology. Psychological Associates who receive their degrees during or after 1996 must document that their degree program included an internship, externship, or practicum at a site providing health services which meets all the following criteria:

- (1) The internship, externship, or practicum

must have been in a planned and directed program of training in health services, in contrast to on-the-job training, and must have provided the trainee with a planned and directed sequence of training integrated with the educational program in which the individual was enrolled.

- (2) The internship, externship, or practicum site must have had a clearly designated and appropriately licensed psychologist who was responsible for the integrity and quality of the training program.
- (3) Typically, the internship, externship, or practicum must have been comprised of the equivalent of at least one semester's training and must have been a minimum of 12 weeks and 200 hours of supervised training.
- (4) The internship, externship, or practicum must have had a written program description detailing its functioning and must have been approved by the applicant's training program prior to its occurrence.
- (5) The internship, externship, or practicum must have provided a minimum of one hour per week of individual face-to-face, regularly scheduled supervision with the specific intent of overseeing the health services rendered by the trainee.
- (6) At least 50% of the training must have been spent in the provision of direct health services to patients or clients seeking assessment of treatment, and must have been comprised of a range of assessment and treatment interventions.
- (7) Supervision may have been provided in part by psychiatrists, social workers, or other mental health professionals qualified by the training site, but at least 50% of supervision must have been provided by an appropriately licensed and/or certified psychologist.
- (8) Persons enrolled in the internship, externship or practicum must have been designated as "interns, "externs", or "practicum students" or hold other designation which clearly indicated training status.

Statutory Authority G.S. 90-270.9; 90-270.20(c).

**TITLE 25 - OFFICE OF
STATE PERSONNEL**

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend rule cited as 25 NCAC 01E .0902.

The proposed effective date of this action is April 1, 1995.

The public hearing will be conducted at 9:00 a.m. on February 9, 1995 at the State Personnel Development Center, 101 West Peace Street, Raleigh, North Carolina.

Reason for Proposed Action: This Rule is proposed to be amended in order to facilitate employees' observances of religious holidays.

Comment Procedures: Interested persons may present statements either orally or in writing at the Public Hearing or in writing prior to the hearing by mail, addressed to: Patsy Smith Morgan, Office of State Personnel, 116 West Jones Street, Raleigh, North Carolina 27603.

**CHAPTER 1 - OFFICE OF
STATE PERSONNEL**

**SUBCHAPTER 1E - EMPLOYEE
BENEFITS**

SECTION .0900 - HOLIDAYS

.0902 RELIGIOUS OBSERVANCES

~~All of the holidays listed in 25 NCAC 1E .0901 are legal holidays established by the State Legislature or days observed as holidays by state employees as established by the State Personnel Commission. Employees may wish to be away from work on certain days for religious observances. It is a policy of the state that agency administrators arrange the work schedule so that an employee may take vacation leave when requested because that day is a major religious observance for that employee. No such request for vacation leave should be denied unless it would create an emergency condition which cannot be prevented in any other manner. The agency shall make efforts to accommodate an employee's request to be away from work for certain religious holiday observanc-~~

es; however, nothing shall obligate the agency to make accommodation if, in accommodating the request, it would result in undue hardship on the agency or its employees.

Statutory Authority G.S. 126-4.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

ADMINISTRATION

State Employees Combined Campaign

*1 NCAC 35 .0202 - Content of Applications
Agency Revised Rule*

*RRC Objection 11/17/94
Obj. Removed 11/17/94*

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Management

15A NCAC 2Q .0112 - Applications Requiring Professional Engineer Seal

RRC Objection 11/17/94

General Procedures for Public Health Programs

15A NCAC 24A .0404 - Reimbursement for Services Not Covered by Medicaid

RRC Objection 12/15/94

Wildlife Resources and Water Safety

*15A NCAC 10B .0106 - Wildlife Taken for Depredations or Accidentally
Agency Revised Rule*

*RRC Objection 11/17/94
Obj. Cont'd 11/17/94*

HUMAN RESOURCES

Mental Health: General

*10 NCAC 14K .0314 - Assessment
Agency Revised Rule*

*RRC Objection 11/17/94
Obj. Removed 11/17/94*

*10 NCAC 14K .0315 - Treatment/Habilitation Planning and Documentation
Agency Revised Rule*

*RRC Objection 11/17/94
Obj. Removed 11/17/94*

INSURANCE

Medical Database Commission

*11 NCAC 15 .0006 - Data Submission
Agency Revised Rule
Agency Revised Rule*

*RRC Objection 10/20/94
Obj. Cont'd 10/20/94
Obj. Removed 11/17/94*

*11 NCAC 15 .0007 - Provider Verification
Agency Revised Rule
Agency Revised Rule*

*RRC Objection 10/20/94
Obj. Cont'd 10/20/94
Obj. Removed 11/17/94*

LICENSING BOARDS AND COMMISSIONS

Board of Barber Examiners

21 NCAC 6F .0001 - Physical Structure

RRC Objection 11/17/94

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 6L .0002 - Measurements of Barber Shop</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Dental Examiners

<i>21 NCAC 16M .0001 - Dentists</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Licensing Board of Landscape Architects

<i>21 NCAC 26 .0105 - Fees</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Opticians

<i>21 NCAC 40 .0314 - Apprenticeship and Internship Requirements; Registration</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>11/17/94</i>
<i>21 NCAC 40 .0319 - Applicants From Other States</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

Board of Professional Engineers and Land Surveyors

<i>21 NCAC 56 .0502 - Application Procedure: Individual</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1702 - Definitions</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1703 - Requirements</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1704 - Units</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>
<i>21 NCAC 56 .1705 - Determination of Credit</i>	<i>RRC Objection</i>	<i>11/17/94</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>11/17/94</i>

SECRETARY OF STATE

Notary Public Division

<i>18 NCAC 7 .0301 - Approved Course of Study</i>	<i>RRC Objection</i>	<i>12/15/94</i>
<i>18 NCAC 7 .0302 - Instructors</i>	<i>RRC Objection</i>	<i>12/15/94</i>

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>North Carolina Council for Women</i>				
Family Violence Prevention Services v. N.C. Council for Women	94 DOA 0242	West	04/13/94	
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Jerry Lee McGowan v. Alcoholic Beverage Control Comm.	93 ABC 0363	Morrison	08/23/94	
Alcoholic Beverage Control Comm. v. Entertainment Group, Inc.	93 ABC 0719	Gray	03/02/94	
Alcoholic Beverage Control Comm. v. Dachae Chang	93 ABC 0775	Morrison	09/21/94	
Rayvon Stewart v. Alcoholic Beverage Control Commission	93 ABC 0793	Nesnow	04/11/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0892	Morgan	06/03/94	
Alcoholic Beverage Control Comm. v. Peggy Sutton Walters	93 ABC 0906	Mann	03/18/94	
Russell Bernard Speller d/b/a Cat's Disco v. Alcoholic Bev Ctl Comm.	93 ABC 0937	Morrison	03/07/94	
Alcoholic Beverage Control Comm. v. Branchland, Inc.	93 ABC 0993	Morgan	06/03/94	
Edward Ogunjobi, Club Piccadilli v. Alcoholic Beverage Control Comm.	93 ABC 1024	West	03/03/94	
Robert Kovalaske, Nick Pikoulas, Joseph Marshburn, Evangelos Pikoulas, d/b/a Our Mom's BBQ v. Alcoholic Beverage Control Commission	93 ABC 1029	Gray	03/04/94	
Christine George Williams v. Alcoholic Beverage Control Comm.	93 ABC 1057	Becton	04/21/94	
Lynn Ann Garfagna v. Alcoholic Beverage Control Commission	93 ABC 1481	Gray	07/19/94	
Alcoholic Beverage Control Comm. v. Raleigh Limits, Inc.	93 ABC 1485	Mann	03/11/94	
Alcoholic Beverage Control Comm. v. COLAP Enterprises, Inc.	94 ABC 0060	Nesnow	06/07/94	
Alcoholic Beverage Control Comm. v. Mitch's Tavern, Inc.	94 ABC 0064	Gray	07/26/94	
Alcoholic Beverage Control Comm. v. Ms. Lucy Jarrell Powell	94 ABC 0070	Morgan	06/06/94	
Alcoholic Beverage Control Comm. v. Richard Wayne Barrow	94 ABC 0079	Gray	10/14/94	
Alcoholic Beverage Control Comm. v. Subhashbai C. Patel	94 ABC 0083	West	11/01/94	
Alcoholic Beverage Control Comm. v. Daphne Ann Harrell	94 ABC 0115	Nesnow	07/18/94	
Mr. & Mrs. Josh Bullock Jr. v. Alcoholic Beverage Control Comm.	94 ABC 0124	Morgan	06/06/94	
Jerome Crawford v. Alcoholic Beverage Control Commission	94 ABC 0125	Morgan	06/06/94	
Lawrence Mungin v. Alcoholic Beverage Control Commission	94 ABC 0149	Chess	08/08/94	
Willie Poole Jr. v. Alcoholic Beverage Control Commission	94 ABC 0232	Chess	09/02/94	
Alonza Mitchell v. Alcoholic Beverage Control Commission	94 ABC 0257	Morrison	07/28/94	9:11 NCR 870
Roy Dale Cagle v. Alcoholic Beverage Control Commission	94 ABC 0260	West	07/13/94	
Christopher C. Gause, James A Jinwright v. Alcoholic Bev. Ctl. Comm.	94 ABC 0532	Gray	09/27/94	
Rajaddin Abdelaziz v. Alcoholic Beverage Control Commission	94 ABC 0600	Chess	09/22/94	
Alcoholic Bev. Ctl. Comm. v. Partnership, T/A Price Downs Food Mart	94 ABC 0856	West	11/22/94	
Alcoholic Beverage Control Comm. v. James Earl Mullins, Sr.	94 ABC 0934	West	12/05/94	
COMMERCE				
<i>Savings Institutions Division</i>				
James E. Byers, et al v. Savings Institutions	93 COM 1622	Chess	03/01/94	
CORRECTION				
<i>Division of Prisons</i>				
Gene Strader v. Department of Correction	94 DOC 0252	Morrison	03/21/94	
CRIME CONTROL AND PUBLIC SAFETY				
Joseph Guernsey & Parents, Robert Guernsey & Dolores Guernsey v. Pitt County Hospital Eastern Radiologists	94 CPS 0413	Gray	07/11/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Crime Victims Compensation Commission</i>				
Mae H. McMillan v. Crime Victims Compensation Commission	92 CPS 1328	Morgan	08/11/94	
James Hugh Baynes v. Crime Victims Compensation Commission	93 CPS 0801	West	03/28/94	9:2 NCR 114
Ross T. Bond v. Victims Compensation Commission	93 CPS 1104	West	04/21/94	
James A. Canady v. Crime Victims Compensation Commission	93 CPS 1108	Gray	03/28/94	
Virginia Roof v. Department of Crime Control & Public Safety	93 CPS 1347	Nesnow	03/24/94	
Karen C. Tilghman v. Crime Victims Compensation Commission	93 CPS 1608	Reilly	05/17/94	9:6 NCR 407
Rosemary Taylor v. Crime Victims Compensation Commission	93 CPS 1626	Nesnow	05/25/94	
Violet E. Kline v. Crime Victims Compensation Commission	93 CPS 1670	Morgan	06/13/94	
James Benton v. Crime Victims Compensation Commission	94 CPS 0034	Chess	06/14/94	
Percy Clark v. Crime Victims Compensation Commission	94 CPS 0127	Reilly	04/19/94	
J. Richard Spencer v. Crime Victims Compensation Commission	94 CPS 0157	Chess	06/14/94	
Albert H. Walker v. Crime Victims Compensation Commission	94 CPS 0229	Reilly	08/11/94	
Barbara Henderson v. Crime Victims Compensation Commission	94 CPS 0259	Morrison	04/07/94	
Shirley Handsome v. Crime Victims Compensation Commission	94 CPS 0286	Gray	04/28/94	
Georgeann Young v. Crime Victims Compensation Commission	94 CPS 0292	Reilly	04/18/94	
Lawrence L. Tyson v. Crime Victims Compensation Commission	94 CPS 0368	Gray	04/26/94	
Ada Battle v. Crime Victims Compensation Commission	94 CPS 0414	Reilly	08/23/94	
Lyman L. Chapman v. Crime Victims Compensation Commission	94 CPS 0415	Chess	06/02/94	
Douglas and Virginia Wilson v. Crime Victims Compensation Comm.	94 CPS 0417	Reilly	06/07/94	
Blanche J. Taylor v. William Hooks Jr., Crime Victims Comp. Comm.	94 CPS 0464	Mann	10/28/94	
Michelle L. Wilcox v. Crime Victims Compensation Commission	94 CPS 0467	Reilly	06/07/94	
Charlie E. McDonald v. Crime Victims Compensation Commission	94 CPS 0468	Gray	09/02/94	9:13 NCR 1056
Lillie Alford/behalf/estate/Venise Alford v. Crime Victims Comp. Comm.	94 CPS 0488	West	11/10/94	
Michael G. Low v. Crime Victims Compensation Commission	94 CPS 0524	Morrison	06/13/94	
Torbit Smith v. Victims Compensation Commission	94 CPS 0535	Becton	10/26/94	
Maureen P. Wilson v. Crime Victims Compensation Commission	94 CPS 0567	Gray	09/23/94	
Kay Thompson Chambers v. Crime Victims Compensation Commission	94 CPS 0581	Morrison	09/28/94	
James R. Gray v. Crime Victims Compensation Commission	94 CPS 0603	Reilly	08/19/94	
Hazel Jarvis v. Victims Compensation Commission	94 CPS 0664	Chess	07/29/94	
Pattie Hale v. Victims Compensation Fund	94 CPS 0734	West	09/06/94	
Dana Harris v. Crime Victims Compensation Commission	94 CPS 0832	Nesnow	09/26/94	
Dorian Walter St. Patrick Scott v. Victims Compensation Comm.	94 CPS 0883	Nesnow	10/04/94	
In the Matter of the Claim of Claimant: Shirley Robinson Victim: Dandre J. Lamont Offender Charles Fernandez v. Crime Victims Compensation Comm.	94 CPS 1070	Nesnow	12/12/94	
Mary E. Haskins v. Crime Victims Compensation Commission	94 CPS 1406	Gray	03/17/94	
EMPLOYMENT SECURITY COMMISSION				
David Lee Bush v. Employment Security Commission	91 ESC 0395	Reilly	08/18/94	
ENVIRONMENT, HEALTH, AND NATURAL RESOURCES				
Bobby Stallings v. Environment, Health, and Natural Resources	90 EHR 0612	Morgan	08/11/94	
James M. Lyles v. Brunswick County Office of Permits	92 EHR 0333	Chess	09/22/94	
Erby Lamar Grainger v. Environment, Health, & Natural Resources	93 EHR 0071	Reilly	11/22/94	
William P. Shaver, R. McKinnon Morrison III, Jill Ray, Dr. Wesley C. Ray, Douglas W. Furr, Catherine H. Furr & Caldwell Creek Farm, Inc. v. EHNR-State of North Carolina	93 EHR 0452	Morgan	08/11/94	
Ron D. Graham, Suzanne C. Graham v. Robert Cobb, Mecklenburg Cty	93 EHR 1017	Becton	05/31/94	
Carnel D. Pearson Jr. v. Craven Co. Division of Health & DEHNR	93 EHR 1759	Mann	09/06/94	
Patricia D. Solomon v. Macon County Health Department	93 EHR 1777	West	05/23/94	
Elbert L. Winslow v. EHNR/Guilford Cty Health Dept. & Guilford Cty Planning & Zoning Board	94 EHR 0086	Chess	07/13/94	
Kathryn A. Whitley v. Macon County Health Department	94 EHR 0088	West	07/13/94	
Brook Hollow Estates v. Environment, Health, & Natural Resources	94 EHR 0093	West	06/03/94	
Bobby Combs v. Public Water Supply Section	94 EHR 0202	West	10/19/94	
Oceanfront Court, David C. Gagnon v. Environment, Health, & Nat. Res.	94 EHR 0210	Chess	06/21/94	
Sam's Club #8219 v. Mecklenburg County Health Department	94 EHR 0329	Nesnow	06/15/94	9:7 NCR 496
Everhart & Associates, Inc. and Hettie Tolson Johnson v. Environment, Health, and Natural Resources and Zelig Robinson	94 EHR 0392	Reilly	10/18/94	9:15 NCR 1231
Richard A. Jenkins v. NC Water Pollution Ctl. Sys. Op. Cert. Comm.	94 EHR 0424	West	10/11/94	
Eugene Crawford & Nancy P. Crawford v. Macon County Health Dept.	94 EHR 0500	Gray	06/10/94	
Joseph B. Leggett v. Environment, Health, & Natural Resources	94 EHR 0560	West	09/21/94	
Tri-Circuits, Inc. v. Environment, Health, & Natural Resources	94 EHR 0601	Morrison	06/30/94	
Thomas Taylor Fain v. Martin-Tyrrell-Wash. Dist. Health Dept., EHNR	94 EHR 0736	West	11/22/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Marlen C. Robb, Jr. v. CAMA, Washington, NC EHNR	94 EHR 0767	West	11/22/94	
Irene, Will, Eric Litaker v. Montgomery County Health Department	94 EHR 0776	Gray	09/06/94	
James Loder v. New Hanover Inspection Svcs., Local CAMA Permit Off.	94 EHR 0821	Chess	11/21/94	
<i>Coastal Management</i>				
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	89 EHR 1378 ^{w2}	Gray	04/07/94	
Roger Fuller v. EHNR, Div. of Coastal Mgmt & Environmental Mgmt	90 EHR 0017 ^{w2}	Gray	04/07/94	
John R. Hooper v. EHNR, Div./Coastal Mgmt & Bird's Nest Partnership	90 EHR 0455	Morgan	08/11/94	
Gary E. Montalbino v. Division of Coastal Management	93 EHR 1792	Nesnow	03/21/94	
Paley-Midgett Partnership v. Coastal Resources Commission	94 EHR 0315	Gray	06/01/94	
<i>Craven County Health Department</i>				
Cox Transport Equipment, Harvey A Cox v. County of Craven, EHNR	94 EHR 0487	West	11/01/94	
<i>Environmental Health</i>				
Jane C. O'Malley, Melvin L. Cartwright v. EHNR & District Hlth Dept Pasquotank-Perquimans-Camden-Chowan	91 EHR 0838	Becton	04/06/94	
Henry Lee Bulluck v. Nash County Health Department & EHNR	93 EHR 0348	Morgan	07/22/94	
Environment, Health, & Natural Res. v. Clark Harris & Jessie Lee Harris	93 EHR 0924	Becton	03/03/94	
Richard F. Ebersold v. Jackson County Health Department & EHNR	93 EHR 1391	Chess	06/24/94	
Sidney S. Tate Jr. v. Dept. of Environment, Health, & Natural Resources	94 EHR 0005	Reilly	05/24/94	
George A. Waugh, Shirley A. Waugh v. Carteret Cty Health & Env. Hlth	94 EHR 0128	Chess	07/13/94	
Scotland Water Co., Laurin Lakes v. Environment, Health, & Nat. Res.	94 EHR 0200	Nesnow	04/27/94	
H.A. Lentz v. Department of Environment, Health, & Natural Resources	94 EHR 0235	Nesnow	07/19/94	
Floyd Benn Williams v. Dept. of Environment, Health, & Nat. Res.	94 EHR 0333	Reilly	05/18/94	
Ralston Pound, Jr. & Deanie S. Pound v. Carteret Cty. Env. Health Dept.	94 EHR 1003	Reilly	12/07/94	
<i>Environmental Management</i>				
David Springer v. Dept. of Environment, Health, & Natural Resources	92 EHR 1797	Morgan	05/19/94	
Petroleum Installation Equipment Co., Inc. v. Env., Health & Nat. Res.	93 EHR 0531	Chess	03/21/94	
Howell's Child Care Center, Inc. v. EHNR, Div of Environmental Mgmt.	93 EHR 0955	West	11/02/94	
Spring Valley Meats, Inc. v. Environment, Health, & Natural Resources	93 EHR 0974	West	11/03/94	
Jack Griffin v. Dept. of Environment, Health, and Natural Resources	93 EHR 1030	Becton	03/21/94	
Wooten Oil Company v. EHNR, Div of Environmental Management	94 EHR 0001	West	09/30/94	
John G. Owens & J.B.S. Mechanical Svcs, Inc. v. EHNR, Env. Mgmt.	94 EHR 0024	Mann	09/07/94	
General Electric Co., Inc. v. EHNR, Env. Mgmt. Comm. & City/Mebane	94 EHR 1031	Reilly	11/30/94	9:19 NCR 1595
<i>Land Resources</i>				
Wallace B. Clayton, Dr. Marshall Redding v. Div. of Land Resources	93 EHR 1407	Morgan	08/09/94	
Town of Kernersville (LQS 93-053) v. Environment, Health, & Nat. Res.	93 EHR 1781	Chess	06/29/94	9:8 NCR 581
Royce Perry, Paul Perry v. Dept. of Environment, Health, & Natural Res.	94 EHR 0525	Gray	07/01/94	
<i>Marine Fisheries</i>				
Robert I. Swinson, Virginia S. Swinson v. EHNR, Div/Marine Fisheries	93 EHR 0394	Gray	04/11/94	
Larry J. Batson v. Division of Marine Fisheries	93 EHR 0857	Morgan	07/22/94	
David W. Oglesby v. Division of Marine Fisheries	93 EHR 0930 ^{ad}	West	07/25/94	9:10 NCR 758
David E. Oglesby v. Division of Marine Fisheries	93 EHR 0931 ^{ad}	West	07/25/94	9:10 NCR 758
James Goodman v. EHNR, Division of Marine Fisheries	94 EHR 0035	Nesnow	07/18/94	9:9 NCR 660
Billy Ervin Burton v. Division of Marine Fisheries	94 EHR 0504	Nesnow	09/01/94	
<i>Maternal and Child Health</i>				
<i>WIC Section</i>				
Anthony Awucuh v. EHNR, Div. Maternal & Child Health, WIC Section	94 EHR 0718	Chess	09/23/94	

* Consolidated Cases.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Solid Waste Management</i>				
Roger Sessoms v. EHNR/Asbestos Hazard Management Branch	93 EHR 0951	Gray	03/28/94	
Bertie Citizens Action Coalition, Inc.; Willard J. Oliver, Reginald Early, Herbert Jenkins, Jr., Lindwood Earl Tripp, Willie Warren Tripp, Mary Alice Cherry, and Kathy Burden v. EHNR, Solid Waste Management Division, and East Carolina Environmental, Inc., Addington Environmental, Inc., et al.	93 EHR 1045	Morrison	04/06/94	9:3 NCR 214
Bobby Benton v. EHNR & Division of Solid Waste	94 EHR 0442	Gray	08/22/94	
<i>HUMAN RESOURCES</i>				
Jerome Triplin v. Department of Human Resources	93 DHR 0108	Reilly	08/19/94	
Helen J. Walls, Walls Young World v. Department of Human Resources	93 DHR 0965	Morgan	08/11/94	
Brenda C. Robinson v. Department of Human Resources	94 DHR 0365	West	06/01/94	
Betty Rhodes v. Department of Human Resources	94 DHR 0501	Morrison	06/02/94	
Mr. & Mrs. Richard Bullen v. Department of Human Resources	94 DHR 0811	Becton	11/14/94	
<i>Distribution Child Support</i>				
Mona L. Stanback v. DHR, Div/Social Svcs, Child Support Enf. Section	93 DCS 0969	Morgan	08/02/94	
Jachell D. Parker v. Department of Human Resources	93 DCS 0371	Morgan	07/14/94	
Earleen G. Tinsley v. Department of Human Resources	94 DCS 0651	Nesnow	09/15/94	
<i>Division of Child Development</i>				
Judith Fridley v. Div. of Child Development/Abuse/Neglect Unit	93 DHR 0973	Morrison	03/08/94	
DHR, Division of Child Development v. Joyce Gale	93 DHR 1344	Gray	04/28/94	
Lauren Holt, ID#26-0-00037 v. DHR, Div. of Child Development	93 DHR 1549	Becton	07/13/94	
Gloria C. Haith v. Department of Human Resources	93 DHR 1707	Nesnow	03/22/94	
Gloria C. Haith v. Daycare Consultant	93 DHR 1787	Nesnow	03/14/94	
Charles E. Smith v. Department of Human Resources	93 DHR 1797	Nesnow	03/21/94	
Scott's Loving Day Care & Nursery, Mrs. Willie L. Scott v. DHR	94 DHR 0106	Nesnow	06/29/94	
Belinda K. Mitchell v. Human Resources, Div. of Child Development	94 DHR 0119	Reilly	06/30/94	
Living Word Day Care, Jonathan Lankford v. Dept. of Human Resources	94 DHR 0168	Nesnow	03/23/94	
David G. Whitted, Pres., Toddlers Academy, Inc. v. Div of Child Dev.	94 DHR 0453	Mann	09/23/94	
Miriam C. Kircher v. Human Resources, Div. of Child Development	94 DHR 0615	Morrison	11/17/94	
Mary T. Hill v. Human Resources, Division of Child Development	94 DHR 0944	Chess	11/16/94	
<i>Facility Services</i>				
Laura Harvey Williams v. DHR, Division of Facility Services	93 DHR 0391	Morgan	08/11/94	
Presbyterian-Orthopaedic Hospital v. Department of Human Resources	93 DHR 0805	Reilly	03/11/94	
Judy Hoben Wallace v. Department of Human Resources	93 DHR 0935	Gray	05/23/94	
Lowell Stafford v. Department of Human Resources	93 DHR 1381	Gray	04/15/94	
Willie J. McCombs v. Human Resources, Div. of Facility Services	94 DHR 0430	Gray	09/29/94	
Mr. & Mrs. Alvin Wilson v. DHR, Division of Facility Services	94 DHR 0559	Chess	08/25/94	
Steve Alan Russell v. DHR, Div. of Facility Svcs, Emergency Med. Svcs	94 DHR 0830	Gray	11/28/94	
<i>Certificate of Need Section</i>				
Charles E. Hunter, Jr., M.D. & Coastal Perfusion Svcs, Inc. v. Department of Human Resources, and Wilmington Perfusion Corp. and Howard F. Marks, Jr., M.D.	93 DHR 0746	Morgan	04/11/94	
Cape Fear Memorial Hospital v. Department of Human Resources	93 DHR 1552	Reilly	08/15/94	
Angel Community Hospital, Inc. v. DHR, Div. of Facility Svcs., Cert./ Need Section, and Brithaven, Inc., d/b/a Brithaven of Franklin	94 DHR 0146	West	10/21/94	
The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0197*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR The Carrolton of Fayetteville, Inc. v. Department of Human Resources and	94 DHR 0198*	Morgan	08/11/94	
Highland House of Fayetteville, Inc. & Richard R. Allen Sr. v. DHR ABC Home Health Services, Inc. v. Human Resources, Div. of Facility Services, Certificate of Need Section v. Mecklenburg Home Health, Inc., d/b/a Home Health Professionals of Guilford	94 DHR 0254	Morrison	11/17/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Professional Nursing Services, Inc. and Betty Wallace v. Certificate of Need Section, Div. of Facility Services, Human Resources and Duplin Home Care & Hospice, Inc.; Hometown Hospice, Inc.; Craven County Health Dept. Home Health-Hospice Agency; Hospice of Pamlico County, Inc.; Hospice of Carteret County; and Comprehensive Home Health Care 1, Inc.	94 DHR 0609	West	11/21/94	
<i>Division of Medical Assistance</i>				
J.R., by and through her agent & Personal Rep., Hank Neal v. DHR	93 DHR 0528	Gray	04/27/94	
N.R. by & through her agt & personal rep E.C.J. v. DHR, Medical Assis.	93 DHR 0538	Chess	07/01/94	
David Yott v. Department of Human Resources	93 DHR 1113	Gray	04/05/94	
Sampson County Memorial Hospital v. DHR, Div of Medical Assistance	93 DHR 1760	West	09/07/94	
Division of Medical Assistance v. Catawba Cty Dept. of Social Services	93 DHR 1778	West	03/04/94	
Lu Ann Leidy, MD/Dorothea Dix Hosp. Child & Youth v. Medical Assis.	94 DHR 0448	Chess	06/21/94	
<i>Division of Social Services</i>				
Evelyn Moore v. Department of Human Resources	94 DHR 0293	Reilly	04/15/94	
Nathaniel Harrell, Annie Harrell v. Department of Social Services	94 DHR 0440	Gray	06/27/94	
<i>Child Support Enforcement Section</i>				
Alfred Bennett v. Department of Human Resources	90 CSE 1146	Morgan	08/11/94	
Shelton Staples v. Department of Human Resources	91 CSE 0660	Morgan	08/11/94	
Helen Lee Harvell Jones v. Department of Human Resources	91 CSE 1183	Morgan	08/11/94	
Dalton Felton Sr. v. Department of Human Resources	92 CSE 0532	Morgan	07/13/94	
Colby S. Hughes v. Department of Human Resources	92 CSE 1199	Morgan	08/10/94	
Gary Eugene Honeycutt v. Department of Human Resources	92 CSE 1207	Morgan	08/10/94	
Vicki C. Conn v. Department of Human Resources	92 CSE 1268	Morgan	08/10/94	
John R. Lossiah v. Department of Human Resources	92 CSE 1345	Mann	10/13/94	
Melvin L. Miller Sr. v. Department of Human Resources	92 CSE 1372	Morgan	08/10/94	
Robert L. Hicks v. Department of Human Resources	92 CSE 1591	Morgan	08/10/94	
Thomas Sadler v. Department of Human Resources	92 CSE 1739	Becton	10/18/94	
Nancy Richardson v. Department of Human Resources	93 CSE 0180	Chess	11/22/94	
Frederick C. Burdick Jr. v. Department of Human Resources	93 CSE 0227	Mann	11/09/94	
Darryl D. Leedy v. Department of Human Resources	93 CSE 0591	Morgan	08/11/94	
David M. Fogleman Jr. v. Department of Human Resources	93 CSE 1074	Mann	10/10/94	
William Heckstall v. Department of Human Resources	93 CSE 1077	Reilly	03/14/94	
Luther Hatcher v. Department of Human Resources	93 CSE 1082	Mann	05/24/94	
Bryan Jeffrey Cole v. Department of Human Resources	93 CSE 1091	Becton	03/30/94	
Anthony E. Bullard v. Department of Human Resources	93 CSE 1094	Nesnow	06/13/94	
Donald E. Height v. Department of Human Resources	93 CSE 1110	Morgan	08/11/94	
Dexter L. Chambers v. Department of Human Resources	93 CSE 1124	West	03/28/94	
Ronald E. Johnson v. Department of Human Resources	93 CSE 1125	Becton	03/30/94	
Roger Moore v. Department of Human Resources	93 CSE 1127	Becton	04/14/94	
Alvin Lee Martin v. Department of Human Resources	93 CSE 1128	Nesnow	04/04/94	
James J. Malloy v. Department of Human Resources	93 CSE 1132	Gray	10/03/94	
Robert Young v. Department of Human Resources	93 CSE 1133	Reilly	04/18/94	
Henry M. Dillard v. Department of Human Resources	93 CSE 1135	Nesnow	06/13/94	
Vernon Byrd v. Department of Human Resources	93 CSE 1136	Becton	08/22/94	
Sherman E. Ames v. Department of Human Resources	93 CSE 1137	Chess	11/09/94	
Antonio Townsend v. Department of Human Resources	93 CSE 1139	Becton	03/30/94	
Keith M. Gray v. Department of Human Resources	93 CSE 1140	Nesnow	06/28/94	
Troy E. Pinkney v. Department of Human Resources	93 CSE 1148	Mann	03/29/94	
Anthony A. Macon v. Department of Human Resources	93 CSE 1149	Gray	04/26/94	
Walter Lee Corbett v. Department of Human Resources	93 CSE 1150	Reilly	03/30/94	
Joseph E. Kernstine v. Department of Human Resources	93 CSE 1151	Morgan	07/15/94	
Alvin M. Davis v. Department of Human Resources	93 CSE 1152	Morgan	08/04/94	
Thomas M. Birdwell III v. Department of Human Resources	93 CSE 1155	Morgan	08/02/94	
Joe Louis Mayo v. Department of Human Resources	93 CSE 1161	West	04/19/94	
Bobby Lewis Smith v. Department of Human Resources	93 CSE 1162	Nesnow	06/16/94	
Lawrence D. Dean v. Department of Human Resources	93 CSE 1165	Gray	10/27/94	
Louis C. Cade v. Department of Human Resources	93 CSE 1166	Morrison	06/16/94	
Richard J. Swarm v. Department of Human Resources	93 CSE 1167	Reilly	06/17/94	
Nash Andrew Newsome v. Department of Human Resources	93 CSE 1170	Mann	03/17/94	
James E. Watson v. Department of Human Resources	93 CSE 1171	Gray	04/26/94	
Robert Lee Barrett v. Department of Human Resources	93 CSE 1172	Morrison	04/20/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Anthony Raynor Sr. v. Department of Human Resources	93 CSE 1173	Morrison	10/27/94	
Betty A. Williams, Fred E. Jones v. Department of Human Resources	93 CSE 1178	Nesnow	04/20/94	
Jeff A. Taylor v. Department of Human Resources	93 CSE 1180	Morgan	07/15/94	
Eric G. Sykes v. Department of Human Resources	93 CSE 1181	Becton	04/20/94	
John Hagins v. Department of Human Resources	93 CSE 1182	Mann	11/14/94	
Terrence D. Timmons v. Department of Human Resources	93 CSE 1183	Becton	10/11/94	
Ray A. Johnstone v. Department of Human Resources	93 CSE 1186	Morrison	10/03/94	
Morris Ray Bethel v. Department of Human Resources	93 CSE 1188	West	07/11/94	
Willie C. Hollis v. Department of Human Resources	93 CSE 1191	Becton	05/09/94	
Edward Boggan v. Department of Human Resources	93 CSE 1192	Chess	09/01/94	
Raymond Junior Cagle v. Department of Human Resources	93 CSE 1194	Morrison	10/03/94	
Ernest N. Pruitt Jr. v. Department of Human Resources	93 CSE 1197	Nesnow	06/28/94	
Michael P. McCay v. Department of Human Resources	93 CSE 1198	Morgan	08/02/94	
Robert Matthew Rossi v. Department of Human Resources	93 CSE 1199	Becton	08/22/94	
Bernadette Cook v. Department of Human Resources	93 CSE 1202	Gray	04/27/94	
Rawan Weigel v. Department of Human Resources	93 CSE 1212	Gray	08/26/94	
Lem Person v. Department of Human Resources	93 CSE 1214	Morrison	06/16/94	
Bobby Lee McCullers Jr. v. Department of Human Resources	93 CSE 1215	Reilly	06/17/94	
Randall R. Rhodes v. Department of Human Resources	93 CSE 1219	Nesnow	06/16/94	
Glen Nelson Washington v. Department of Human Resources	93 CSE 1221	Morgan	08/02/94	
Michael V. Dockery v. Department of Human Resources	93 CSE 1222	Morgan	07/15/94	
Robert Corley Jr. v. Department of Human Resources	93 CSE 1225	Chess	10/05/94	
Floyd E. Bailey v. Department of Human Resources	93 CSE 1227	Mann	07/07/94	
Dennis W. Nolan v. Department of Human Resources	93 CSE 1254	Morrison	04/27/94	
Robert Calvin Connor v. Department of Human Resources	93 CSE 1258	West	04/19/94	
James D. Williams v. Department of Human Resources	93 CSE 1259	West	04/19/94	
Mahalon Eugene White v. Department of Human Resources	93 CSE 1261	Nesnow	08/22/94	
Marty Franzen v. Department of Human Resources	93 CSE 1264	Morgan	07/15/94	
Vaughn D. Pearsall v. Department of Human Resources	93 CSE 1267	Becton	04/20/94	
Gerald L. Murrell v. Department of Human Resources	93 CSE 1271	Gray	08/26/94	
Larry D. Dawson v. Department of Human Resources	93 CSE 1273	Morrison	07/07/94	
McDaniel Teeter Jr. v. Department of Human Resources	93 CSE 1274	Morrison	06/30/94	
King D. Graham v. Department of Human Resources	93 CSE 1275	Becton	05/18/94	
Brian C. Carelock v. Department of Human Resources	93 CSE 1276	Mann	10/13/94	
Bradford C. Lewis v. Department of Human Resources	93 CSE 1278	Mann	10/13/94	
Derek Watson v. Department of Human Resources	93 CSE 1283	Reilly	06/30/94	
Luther Borden v. Department of Human Resources	93 CSE 1284	West	06/23/94	
Walter B. Lester v. Department of Human Resources	93 CSE 1287	Nesnow	06/28/94	
Wilbert E. Anderson v. Department of Human Resources	93 CSE 1288	Nesnow	10/12/94	
David H. Johnson v. Department of Human Resources	93 CSE 1289	Mann	10/14/94	
William Earl Arrington v. Department of Human Resources	93 CSE 1290	Mann	10/14/94	
William K. Whisenant v. Department of Human Resources	93 CSE 1291	Becton	08/22/94	
Curtis C. Osborne v. Department of Human Resources	93 CSE 1299	Gray	09/19/94	
Stanley J. Forsack v. Department of Human Resources	93 CSE 1301	Morrison	08/23/94	
Larry Cornelius Smith v. Department of Human Resources	93 CSE 1302	Morrison	06/30/94	
Robert C. Lee Jr. v. Department of Human Resources	93 CSE 1303	Reilly	06/30/94	
Sidney Ray Tuggle Jr. v. Department of Human Resources	93 CSE 1307	West	04/25/94	
Michael A. Amos v. Department of Human Resources	93 CSE 1308	West	07/15/94	
Reginald Eugene Hill v. Department of Human Resources	93 CSE 1309	West	10/06/94	
Jimmy C. Harvell v. Department of Human Resources	93 CSE 1310	Nesnow	10/27/94	
John Edward Tannehill v. Department of Human Resources	93 CSE 1312	Nesnow	10/03/94	
Benjamin McCormick v. Department of Human Resources	93 CSE 1313	Morgan	08/02/94	
Steven Connet v. Department of Human Resources	93 CSE 1315	Mann	10/14/94	
Gregory N. Winley v. Department of Human Resources	93 CSE 1316	Becton	06/14/94	
Ronald Brown v. Department of Human Resources	93 CSE 1318	Becton	06/29/94	
David L. Hill v. Department of Human Resources	93 CSE 1320	Chess	11/08/94	
Ronald Fred Metzger v. Department of Human Resources	93 CSE 1323	Mann	09/26/94	
James L. Phillips v. Department of Human Resources	93 CSE 1326	Reilly	06/17/94	
John D. Bryant v. Department of Human Resources	93 CSE 1327	Reilly	10/27/94	
George Aaron Collins v. Department of Human Resources	93 CSE 1331	West	04/25/94	
Ricky Glenn Mabe v. Department of Human Resources	93 CSE 1356	Mann	09/26/94	
Samuel L. Dodd v. Department of Human Resources	93 CSE 1357	Gray	03/31/94	
James W. Smith v. Department of Human Resources	93 CSE 1358	Gray	08/26/94	
William A. Sellers v. Department of Human Resources	93 CSE 1359	Morrison	04/20/94	
Jerry McIver v. Department of Human Resources	93 CSE 1362	Reilly	06/30/94	
Johnny B. Little v. Department of Human Resources	93 CSE 1363	West	06/23/94	
Kenneth W. Cooper v. Department of Human Resources	93 CSE 1364	West	04/27/94	
Nathan D. Winston v. Department of Human Resources	93 CSE 1365	Nesnow	07/07/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Bobby Charles Coleman v. Department of Human Resources	93 CSE 1368	Morgan	08/02/94	
Anthony Curry v. Department of Human Resources	93 CSE 1371	Chess	08/18/94	
Charles W. Norwood Jr. v. Department of Human Resources	93 CSE 1385	West	06/13/94	
David L. Terry v. Department of Human Resources	93 CSE 1386	Mann	05/18/94	
Audwin Lindsay v. Department of Human Resources	93 CSE 1390	Morrison	07/15/94	
Steven A. Elmquist v. Department of Human Resources	93 CSE 1392	Reilly	04/29/94	
Kelvin Dean Jackson v. Department of Human Resources	93 CSE 1394	West	06/13/94	
Terry R. Gibson v. Department of Human Resources	93 CSE 1411	Nesnow	08/24/94	
Melvin Lewis Griffin v. Department of Human Resources	93 CSE 1412	Morgan	08/02/94	
Dennis E. Fountain Jr. v. Department of Human Resources	93 CSE 1414	Chess	05/13/94	
Mark E. Rogers v. Department of Human Resources	93 CSE 1415	Mann	05/03/94	
Daniel J. McDowell v. Department of Human Resources	93 CSE 1416	Gray	09/19/94	
Edna VonCannon v. Department of Human Resources	93 CSE 1417	Morrison	06/14/94	
Darron J. Roberts v. Department of Human Resources	93 CSE 1419	West	08/23/94	
Ephrom Sparkman Jr. v. Department of Human Resources	93 CSE 1422	Morgan	08/04/94	
Alton W. Ivey v. Department of Human Resources	93 CSE 1426	Mann	11/18/94	
Terry James Carothers v. Department of Human Resources	93 CSE 1428	Gray	10/26/94	
Terrance Freeman v. Department of Human Resources	93 CSE 1430	Gray	12/14/94	
Thomas A. Ayers v. Department of Human Resources	93 CSE 1431	Morrison	06/30/94	
Daniel Thomas Hefele v. Department of Human Resources	93 CSE 1432	Morrison	04/28/94	
Gilbert J. Gutierrez v. Department of Human Resources	93 CSE 1433	Morrison	05/13/94	
Alton D. Johnson v. Department of Human Resources	93 CSE 1434	Reilly	04/29/94	
Darryl C. Thompson v. Department of Human Resources	93 CSE 1435	Reilly	06/30/94	
Jeffery E. Holley v. Department of Human Resources	93 CSE 1436	Reilly	08/23/94	
Chester Sanders v. Department of Human Resources	93 CSE 1437	West	04/19/94	
Rodney Guyton v. Department of Human Resources	93 CSE 1439	West	04/21/94	
Nelson Bennett v. Department of Human Resources	93 CSE 1440	Nesnow	08/31/94	
Donald W. Clark v. Department of Human Resources	93 CSE 1441	Nesnow	05/13/94	
William E. David Jr. v. Department of Human Resources	93 CSE 1442	Nesnow	05/02/94	
Arthur Lee Carter v. Department of Human Resources	93 CSE 1445	Morgan	08/10/94	
Frank Reiff v. Department of Human Resources	93 CSE 1448	Becton	08/22/94	
Milburn Ray Burton v. Department of Human Resources	93 CSE 1449	Chess	11/29/94	
John J. Gabriel v. Department of Human Resources	93 CSE 1452	Chess	05/16/94	
Robert Hayes v. Department of Human Resources	93 CSE 1453	Mann	07/07/94	
Donald Ray Copeland v. Department of Human Resources	93 CSE 1454	Mann	10/10/94	
Clark Anthony Bryant v. Department of Human Resources	93 CSE 1455	Gray	06/30/94	
Timothy D. Evans v. Department of Human Resources	93 CSE 1460	Reilly	04/28/94	
Billy Edward Smith v. Department of Human Resources	93 CSE 1461	West	04/19/94	
Allen D. Terrell v. Department of Human Resources	93 CSE 1463	Nesnow	05/02/94	
Ray C. Moses v. Department of Human Resources	93 CSE 1464	Nesnow	04/28/94	
Mickey Bridgett v. Department of Human Resources	93 CSE 1468	Becton	05/24/94	
Stephen L. Brown v. Department of Human Resources	93 CSE 1470	Chesa	09/27/94	
David Beduhn v. Department of Human Resources	93 CSE 1494	Gray	08/30/94	
Bart Ransom v. Department of Human Resources	93 CSE 1495	Morrison	04/29/94	
William H. Simpson Sr. v. Department of Human Resources	93 CSE 1497	West	04/19/94	
Clarence J. Gatling Jr. v. Department of Human Resources	93 CSE 1499	Morgan	08/02/94	
James D. McClure Jr. v. Department of Human Resources	93 CSE 1500	Becton	05/13/94	
Timothy E. Stotlar v. Department of Human Resources	93 CSE 1504	Mann	11/18/94	
Christopher Ivan Smith v. Department of Human Resources	93 CSE 1510	Gray	07/07/94	
Douglas L. Cherrix v. Department of Human Resources	93 CSE 1512	Gray	05/13/94	
Billy L. Sneed v. Department of Human Resources	93 CSE 1514	Gray	12/14/94	
Dwayne Lamont Thompson v. Department of Human Resources	93 CSE 1515	Morrison	04/21/94	
Michael Edwin Smith v. Department of Human Resources	93 CSE 1517	Morrison	08/26/94	
Horace Lee Bass v. Department of Human Resources	93 CSE 1520	Morrison	05/13/94	
Michael Wilder v. Department of Human Resources	93 CSE 1521	Reilly	04/28/94	
William Howard Wright v. Department of Human Resources	93 CSE 1522	Reilly	08/26/94	
James A. Cephas v. Department of Human Resources	93 CSE 1523	Reilly	05/13/94	
Edward E. Furr v. Department of Human Resources	93 CSE 1524	Reilly	06/17/94	
James Hunsaker v. Department of Human Resources	93 CSE 1526	Chesa	11/08/94	
James W. Ragsdale v. Department of Human Resources	93 CSE 1528	Reilly	10/12/94	
Mark E. Campbell v. Department of Human Resources	93 CSE 1537	Nesnow	05/19/94	
Vernon Lamont Weaver v. Department of Human Resources	93 CSE 1538	Nesnow	09/23/94	
Jesse B. McAfee v. Department of Human Resources	93 CSE 1539	Nesnow	09/26/94	
William Ellis v. Department of Human Resources	93 CSE 1540	Morgan	08/02/94	
Henry A. Harriel Jr. v. Department of Human Resources	93 CSE 1541	Morgan	08/04/94	
John H. Fortner Jr. v. Department of Human Resources	93 CSE 1542	Morgan	08/02/94	
Mike Johnson v. Department of Human Resources	93 CSE 1544	Morgan	08/04/94	
Carl E. Crump v. Department of Human Resources	93 CSE 1545	Becton	09/23/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Herman F. Jacobs Jr. v. Department of Human Resources	93 CSE 1557	Chess	09/27/94	
Barriett Easterling v. Department of Human Resources	93 CSE 1560	Mann	05/18/94	
Dorsey L. Johnson v. Department of Human Resources	93 CSE 1565	Gray	09/19/94	
Wade A. Burgess v. Department of Human Resources	93 CSE 1568	Morrison	04/28/94	
Billy Dale Beancy v. Department of Human Resources	93 CSE 1569	Morrison	05/13/94	
Gregory Harrell v. Department of Human Resources	93 CSE 1570	Morrison	08/26/94	
James E. Wiggins Sr. v. Department of Human Resources	93 CSE 1571	Morrison	05/13/94	
Tony A. Draughon v. Department of Human Resources	93 CSE 1572	Reilly	07/07/94	
Gregory L. Rimmer v. Department of Human Resources	93 CSE 1573	Reilly	09/23/94	
Ruben Jonathan Bostillo v. Department of Human Resources	93 CSE 1574	Reilly	09/01/94	
Timothy J. Jones v. Department of Human Resources	93 CSE 1576	West	04/19/94	
Randall E. Hunter v. Department of Human Resources	93 CSE 1579	West	04/19/94	
Cyrus R. Luallen v. Department of Human Resources	93 CSE 1583	Nesnow	06/16/94	
Willie Hawkins v. Department of Human Resources	93 CSE 1585	Morgan	08/02/94	
B.A. Sellen v. Department of Human Resources	93 CSE 1586	Morgan	08/02/94	
John P. Vadas v. Department of Human Resources	93 CSE 1589	Becton	11/08/94	
Gary T. Hudson v. Department of Human Resources	93 CSE 1590	Becton	09/23/94	
Alton E. Simpson Jr. v. Department of Human Resources	93 CSE 1591	Becton	04/20/94	
Johnny T. Usher v. Department of Human Resources	93 CSE 1592	Chess	05/19/94	
Tim H. Maxwell v. Department of Human Resources	93 CSE 1594	Chess	06/30/94	
Charles Darrell Matthews v. Department of Human Resources	93 CSE 1596	West	06/13/94	
John William Vance Jr. v. Department of Human Resources	93 CSE 1597	Becton	05/13/94	
Bobby R. Sanders v. Department of Human Resources	93 CSE 1598	Nesnow	07/25/94	
Michael S. Rhynes v. Department of Human Resources	93 CSE 1599	Nesnow	06/30/94	
Gerry Bernard Whitfield v. Department of Human Resources	93 CSE 1601	Gray	10/14/94	
Denise L. Smith v. Department of Human Resources	93 CSE 1603	Chess	08/18/94	
Brian Gilmore v. Department of Human Resources	93 CSE 1615	Chess	05/13/94	
Jesse Jeremy Bullock v. Department of Human Resources	93 CSE 1632	Morrison	06/14/94	
Jeffrey Alston v. Department of Human Resources	93 CSE 1634	Morrison	09/28/94	
Ronald E. Loweke v. Department of Human Resources	93 CSE 1635	Reilly	06/17/94	
Robert D. Parker v. Department of Human Resources	93 CSE 1637	Reilly	06/29/94	
Charles F. McKirahan Jr. v. Department of Human Resources	93 CSE 1640	West	06/14/94	
Bennie E. Hicks v. Department of Human Resources	93 CSE 1641	Nesnow	07/25/94	
Herbert Council v. Department of Human Resources	93 CSE 1643	Nesnow	07/25/94	
Richard Rachel v. Department of Human Resources	93 CSE 1644	Morgan	08/02/94	
Alan V. Teubert v. Department of Human Resources	93 CSE 1645	Morgan	08/10/94	
Henry L. Ward Jr. v. Department of Human Resources	93 CSE 1646	Morgan	08/02/94	
June V. Pettus v. Department of Human Resources	93 CSE 1647	Becton	10/31/94	
Benjamin J. Stroud v. Department of Human Resources	93 CSE 1648	Becton	05/19/94	
Charles Leonard Fletcher v. Department of Human Resources	93 CSE 1649	Becton	07/20/94	
Tony A. Miles v. Department of Human Resources	93 CSE 1654	Mann	05/24/94	
Dwayne L. Allen v. Department of Human Resources	93 CSE 1655	Mann	05/17/94	
Earl Newkirk Jr. v. Department of Human Resources	93 CSE 1680	Morrison	08/26/94	
Reginald Rorie v. Department of Human Resources	93 CSE 1683	Gray	10/14/94	
James Edward Penley v. Department of Human Resources	93 CSE 1714	Mann	09/26/94	
Joe C. Dean v. Department of Human Resources	93 CSE 1715	Gray	05/23/94	
Vernon Bullock v. Department of Human Resources	93 CSE 1743	Nesnow	07/07/94	
Nathaniel L. Hayes v. Department of Human Resources	93 CSE 1749	Nesnow	11/09/94	
Jessie Liles v. Department of Human Resources	93 CSE 1757	Morgan	08/02/94	
Raymond Scott Eaton v. Department of Human Resources	93 CSE 1761	Becton	06/29/94	
Karen M. Stogner v. Department of Human Resources	93 CSE 1785	Chess	11/08/94	
Nelson Fowler Jr. v. Department of Human Resources	94 CSE 0039	Mann	10/10/94	
Royston D. Blandford III v. Department of Human Resources	94 CSE 0095	West	04/19/94	
Kenneth B. Taylor v. Department of Human Resources	94 CSE 0113	Becton	10/11/94	
Jeffrey S. Anderson v. Department of Human Resources	94 CSE 0114	Chess	11/04/94	
Ronald Erwin Williams v. Department of Human Resources	94 CSE 0141	Becton	09/23/94	
Michael L. Franks v. Department of Human Resources	94 CSE 0142	Chess	08/16/94	
Donnie W. Craghead v. Department of Human Resources	94 CSE 0163	Mann	09/26/94	
Billy D. Gibson v. Department of Human Resources	94 CSE 0166	Mann	09/26/94	
Ronald Garrett v. Department of Human Resources	94 CSE 0227	Reilly	08/22/94	
Ervin C. Harvey v. Department of Human Resources	94 CSE 0247	Becton	08/22/94	
Wanda Jean Lee Daniels v. Department of Human Resources	94 CSE 0266	Morgan	08/02/94	
Charles E. Colston v. Department of Human Resources	94 CSE 0280	Reilly	08/30/94	
Daron Wayne Smith v. Department of Human Resources	94 CSE 0300	Gray	06/27/94	
Maurice Franks v. Department of Human Resources	94 CSE 0310	West	10/27/94	
John D. Melton v. Department of Human Resources	94 CSE 0324	Nesnow	07/25/94	
Michael Lyan Jones v. Department of Human Resources	94 CSE 0402	Morgan	08/02/94	
Dennis Kearney v. Department of Human Resources	94 CSE 0411	Becton	12/13/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Rayson Kelly Jones v. Department of Human Resources	94 CSE 0433	West	09/15/94	
Harry Hayes v. Department of Human Resources	94 CSE 0456	Nesnow	08/22/94	
Richard Eugene Dunn v. Department of Human Resources	94 CSE 0494	West	07/29/94	
Warren F. Welch v. Department of Human Resources	94 CSE 0541	Mann	11/09/94	
Timothy R. Abraham v. Department of Human Resources	94 CSE 0595	Reilly	10/12/94	
Red Thompson Jr. v. Department of Human Resources	94 CSE 0639	Morrison	08/31/94	
Donell Howard v. Department of Human Resources	94 CSE 0672	Reilly	10/27/94	
Lee Johnson Tillman v. Department of Human Resources	94 CSE 0906	West	12/08/94	
JUSTICE				
Alarm Systems Licensing Board				
Alarm Systems Licensing Board v. George P. Baker	93 DOJ 0457	Nesnow	03/10/94	
Patrick P. Sassman v. Alarm Systems Licensing Board	94 DOJ 0709	Chess	09/12/94	
Christopher Pate v. Alarm Systems Licensing Board	94 DOJ 0710	Chess	09/12/94	
Paul J. Allen v. Alarm Systems Licensing Board	94 DOJ 0964	West	10/31/94	
Private Protective Services Board				
Rex Allen Jefferies v. Private Protective Services Board	93 DOJ 0647	Reilly	08/01/94	
Larry C. Hopkins v. Private Protective Services Board	93 DOJ 1618	Morrison	03/07/94	
Gregory K. Brooks v. Private Protective Services Board	94 DOJ 0008	Nesnow	06/28/94	
Stephen M. Rose v. Private Protective Services Board	94 DOJ 0359	Nesnow	05/19/94	
Emuel Lee Clark Jr. v. Private Protective Services Board	94 DOJ 0360	Nesnow	05/19/94	
Dexter R. Usher v. Private Protective Services Board	94 DOJ 0648	Reilly	08/15/94	
Frankie L. McKoy v. Private Protective Services Board	94 DOJ 0706	Chess	09/09/94	
John F. Carmichael v. Private Protective Services Board	94 DOJ 0707	West	12/01/94	
Michael L. Bonner v. Private Protective Services Board	94 DOJ 0794	Morrison	09/14/94	
Edward A. Maguire v. Private Protective Services Board	94 DOJ 0795	West	12/09/94	
Johnny R. Dollar v. Private Protective Services Board	94 DOJ 0796	Morrison	08/24/94	
Training and Standards Division				
Curtiss Lance Poteat v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 0231	Chess	03/28/94	
Willie David Moore v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1071	Nesnow	04/11/94	9:3 NCR 218
Glenn Travia Stout v. Criminal Justice Ed. & Training Stds. Comm.	93 DOJ 1409	Gray	03/03/94	
Steven W. Wray v. Sheriffs' Education & Training Standards Comm.	93 DOJ 1803	Chess	06/29/94	
J. Stevan North v. Sheriffs' Education & Training Standards Comm.	94 DOJ 0040	Chess	06/16/94	
Gregory Blake Manning v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0048	Gray	03/29/94	
Russell Pinkelton Jr. v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0118	Gray	08/10/94	
William Franklin Sheetz v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0196	Chess	06/16/94	
James M. Buie v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0401	Nesnow	08/26/94	
Burns E. Anderson v. Criminal Justice Ed. & Training Stds. Comm.	94 DOJ 0574	Becton	10/04/94	9:15 NCR 1234
Nelson Falcon v. Sheriffs' Education & Training Stds. Comm.	94 DOJ 0611	Mann	08/12/94	
LABOR				
Ronald D. Rumble D/B/A R&R Lawn & Landscaping v. Department of Labor, Wage & Hour Division	94 DOL 0956	Reilly	11/01/94	
MORTUARY SCIENCE				
Mortuary Science v. Perry J. Brown, & Brown's Funeral Directors	93 BMS 0532	Chess	03/28/94	
PUBLIC EDUCATION				
Christopher Murch as Guardian Ad Litem for Angela D. Murch, a Minor v. Barbara Richardson, Admin. Except. Child. Prog.; Craven Cty School Sys.; Bradford L. Sneed, Superintendent	93 EDC 0161	Mann	11/28/94	
Nancy Watson v. Board of Education	93 EDC 0234	Chess	02/28/94	9:2 NCR 108
Janet L. Wilcox v. Carteret County Board of Education	93 EDC 0451	Mann	02/21/94	
Annice Granville, Phillip J. Granville v. Onslow County Bd. of Education	93 EDC 0742	Mann	08/01/94	9:11 NCR 863
Milt Sherman & Rose Marie Sherman v. Pitt County Board of Education	93 EDC 1617	West	11/29/94	
Mary Ann Sciuillo & Frank Sciuillo on behalf of their minor child, Samuel W. Sciuillo v. State Board of Education	94 EDC 0044	Gray	07/22/94	
Wayne Hogwood v. Department of Public Instruction	94 EDC 0653	West	10/20/94	9:16 NCR 1326
Norman Charles Creange v. State Bd. of Ed., Dept. of Public Instruction	94 EDC 0737	Morrison	11/04/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
STATE HEALTH BENEFITS OFFICE				
Linda C. Campbell v. Teachers & St Emp Major Medical Plan	93 INS 0410	Becton	04/22/94	
Timothy L. Coggins v. Teachers' & St Emp Comp Major Med Plan	93 INS 0929	Morrison	03/04/94	
Sandra Tatum v. Teachers & State Employees Comp Major Medical Plan	94 INS 0028	Gray	10/25/94	9:16 NCR 1331
P.H.B. v. Teachers & State Employees Comp Major Medical Plan	94 INS 0345	Gray	08/23/94	9:12 NCR 945
STATE PERSONNEL				
Michael L. K. Benson v. Office of State Personnel	93 OSP 1690	Nesnow	08/23/94	
<i>Agricultural and Technical State University</i>				
Linda D. Williams v. Agricultural and Technical State University	93 OSP 0089	Chess	03/23/94	
Juanita D. Murphy v. Agricultural and Technical State University	93 OSP 0708	Morrison	03/16/94	
Thomas M. Simpson v. Agricultural and Technical State University	93 OSP 1393	Gray	03/24/94	
Pricella M. Curtis v. A&T State University Curriculum & Instruction	94 OSP 0748	Gray	08/17/94	
<i>Department of Agriculture</i>				
Donald H. Crawford v. Department of Agriculture	94 OSP 0108	Reilly	05/23/94	
<i>NC School of the Arts</i>				
Rick McCullough v. Search Comm School/Dance, NC School of the Arts	94 OSP 0511	West	10/14/94	
<i>Butner Adolescent Treatment Center</i>				
Alvin Lamonte Breeden v. Butner Adolescent Treatment Center	94 OSP 0899	Nesnow	10/12/94	
<i>Catawba County</i>				
Sandra J. Cunningham v. Catawba County	93 OSP 1097	Reilly	04/29/94	9:4 NCR 292
<i>North Carolina Central University</i>				
Dianna Blackley v. North Carolina Central University	89 OSP 0494	Nesnow	09/14/94	
Ha-Yilyah Ha-She'B v. NCCU	93 OSP 0875	Becton	04/13/94	9:3 NCR 211
<i>Chapel Hill & Carrboro City School</i>				
Brenda J. Parker v. Stella Nickerson, Chapel Hill & Carrboro City School	94 OSP 0568	West	10/06/94	
<i>Cherry Hospital</i>				
Charles F. Fields v. Cherry Hospital	94 OSP 0498	Morrison	06/15/94	
Gail Marie Rodgers Lincoln v. Cherry Hospital, Goldsboro, NC 27530	94 OSP 0578	West	10/07/94	
<i>Department of Commerce</i>				
Ruth Daniel-Perry v. Department of Commerce	93 OSP 0725	Chess	03/04/94	9:1 NCR 63
<i>Department of Correction</i>				
Leland K. Williams v. Department of Correction	91 OSP 1287	Chess	02/22/94	
Elroy Lewis v. North Central Area - Dept of Correction, Robert Lewis	92 OSP 1770	Becton	05/24/94	9:6 NCR 395
Steven R. Kellison v. Department of Correction	93 OSP 0283	Chess	06/15/94	
Bert Esworthy v. Department of Correction	93 OSP 0711	Chess	04/21/94	
James J. Lewis v. Department of Correction	93 OSP 1121	West	08/31/94	
Merron Burrus v. Department of Correction	93 OSP 1145	West	09/30/94	
Lewis Alsbrook v. Department of Correction, Morrison Youth Institution	93 OSP 1739	West	07/20/94	
Junius C. Page v. Dept. of Correction, Secy. Franklin Freeman	93 OSP 1794	Mann	07/08/94	
Grady Butler, Jr. v. Correction, Div./Prisons, Sampson Cty Ctl Laundry	93 OSP 1804	West	11/30/94	
Richard Hopkins v. Department of Correction	94 OSP 0041	Chess	06/16/94	
Alfred B. Hunt v. Department of Correction	94 OSP 0243	Reilly	04/20/94	
Charles Horne v. Equal Emp. Opportunity Officer & Dept. of Correction	94 OSP 0244	Nesnow	06/16/94	
Adrian E. Graham v. Intensive Probation/Parole	94 OSP 0261	Morrison	04/26/94	
E. Wayne Irvin, D.D.S. v. Div. of Prisons, Department of Correction	94 OSP 0334	Chess	10/03/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0407*6	Chess	09/28/94	
Thomas W. Creswell, Lisa K. Bradley v. Department of Correction	94 OSP 0408*6	Chess	09/28/94	
Barry Lee Clark v. Department of Correction	94 OSP 0437	Chess	09/12/94	
Marietta A. Stancil v. Department of Correction	94 OSP 0652	West	11/22/94	
Edward E. Hodge v. Department of Correction	94 OSP 0829	Nesnow	09/15/94	
Phyllis K. Cameron v. Department of Correction	94 OSP 0896	Nesnow	10/27/94	
Brenda Yvonne Ewell v. Department of Correction	94 OSP 0959	Gray	12/12/94	
Debra D. McKoy v. Department of Correction	94 OSP 0960	Gray	12/12/94	
<i>Eastern Correctional Institution</i>				
Roy A. Keel & Zebedee Taylor v. Eastern Correctional Institution	94 OSP 0160*4	Nesnow	07/20/94	
Roy A. Keel & Zebedee Taylor v. Eastern Correctional Institution	94 OSP 0256*4	Nesnow	07/20/94	
<i>Guilford Correctional Center</i>				
Ann R. Williams v. Guilford Correctional Center #4440	94 OSP 0428	West	06/22/94	
<i>McDowell Correctional Center</i>				
Michael Junior Logan v. Kenneth L. Setzer, McDowell Corr. Ctr.	94 OSP 0546	Gray	09/01/94	
<i>Polk Youth Institution</i>				
Joseph Mark Lewanowicz v. Department of Correction, Polk Youth Inst.	94 OSP 0926	Nesnow	11/07/94	
<i>Cosmetic Art Examiners</i>				
Mary Quaintance v. N.C. State Board of Cosmetic Art Examiners	94 OSP 0372	Chess	06/14/94	
<i>Department of Crime Control and Public Safety</i>				
Don R. Massenburg v. Department of Crime Control & Public Safety	90 OSP 0239	Chess	04/28/94	
Fred L. Kearney v. Department of Crime Control & Public Safety	91 OSP 0401	West	03/18/94	
J.D. Booth v. Department of Crime Control & Public Safety	92 OSP 0953	Morrison	10/18/94	
Sylvia Nance v. Department of Crime Control & Public Safety	92 OSP 1463	Reilly	03/21/94	
Anthony R. Butler v. Highway Patrol	93 OSP 1079	West	08/30/94	
Ruth P. Belcher v. Crime Control & Public Safety, State Highway Patrol	94 OSP 0190	Gray	09/06/94	
Lewis G. Baker v. Crime Control & Public Safety, Office Adj. General	94 OSP 0572	Mana	07/12/94	
William Smith v. State Highway Patrol	94 OSP 0816	Morrison	09/09/94	
Delores Y. Bryant v. Crime Control & Public Safety	94 OSP 0986	Gray	12/14/94	
<i>Dorothea Dix Hospital</i>				
Bettie Louise Boykin v. Dorothea Dix Hospital	94 OSP 0831	Nesnow	09/28/94	
Ernest Akpaka v. Scott Stephens, Dorothea Dix Hospital	94 OSP 0962	Gray	11/01/94	
<i>Durham County Health Department</i>				
Lylla Denell Stockton v. Durham County Health Department	93 OSP 1780	Gray	05/25/94	
<i>East Carolina School of Medicine</i>				
Gloria Dianne Burroughs v. ECU School of Medicine	93 OSP 0909	Becton	10/26/94	
Lillie Mercer Atkinson v. ECU, Dept of Comp. Med., Dr. William H. Pryor Jr., Sheila Church	94 OSP 0162	Gray	10/06/94	
William Lee Perkins v. ECU Sch of Med. Comp. Med. L. Blankenship, Tammy Barnes, Wm Pyroc	94 OSP 0741	West	09/30/94	
<i>East Carolina University</i>				
Lois Toler Wilson v. East Carolina University	94 OSP 0143	Gray	12/06/94	9:19 NCR 1591

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Elizabeth City State University</i>				
James Charles Knox v. Elizabeth City State University	94 OSP 0207	Gray	06/17/94	
<i>Employment Security Commission of North Carolina</i>				
Dan G. Smith v. Employment Security Commission of N.C.	93 OSP 0865	Becton	11/23/94	
Rejeanne B. LeFrancois v. Employment Security Commission of N.C.	93 OSP 1069	West	04/08/94	
<i>Department of Environment, Health, and Natural Resources</i>				
Steven P. Karasinski v. Environment, Health, and Natural Resources	93 OSP 0940	West	09/02/94	
<i>Division of Marine Fisheries</i>				
William D. Nicely v. Environment, Health, & Natural Resources	92 OSP 1454	Becton	05/04/94	9:5 NCR 333
<i>Fayetteville State University</i>				
Bessie Carpenter Locus v. Fayetteville State University	86 OSP 0202	Morrison	11/18/94	9:18 NCR 1500
Roscoe L. Williams v. Fayetteville State University	93 OSP 0487	West	06/22/94	
<i>Department of Human Resources</i>				
Inez Latta v. Department of Human Resources	93 OSP 0830	Becton	03/28/94	
Charla S. Davis v. Department of Human Resources	93 OSP 1762	Gray	03/03/94	
Rose Mary Taylor v. Department of Human Resources, Murdoch Center	93 OSP 0047	Gray	05/06/94	
David R. Rodgers v. Jimmy Summerville, Stonewall Jackson School	94 OSP 0087	Chess	03/16/94	
Dr. Patricia Sokol v. James B. Hunt, Governor and Human Resources	94 OSP 0357	Chess	08/22/94	
Bruce B. Blackmon, M.D. v. DHR, Disability Determination Services	94 OSP 0410	Nesnow	09/14/94	
<i>Craven County Department of Social Services</i>				
Shirley A. Holland v. Craven Cty. Dept./Social Services & Craven Cty.	93 OSP 1606	Gray	07/01/94	
Nettie Jane Godwin (Lawhorn) v. Craven Cty. DSS & Craven Cty.	93 OSP 1607	Gray	07/18/94	9:9 NCR 655
Violet P. Kelly v. Craven Cty. Dept. of Social Services & Craven Cty.	93 OSP 1805	Reilly	07/05/94	
<i>Durham County Department of Social Services</i>				
Belinda F. Jones v. Daniel Hudgins, Durham Cty Dept of Social Svcs	93 OSP 0728	Chess	04/11/94	
Ralph A. Williams v. Durham County Department of Social Services	94 OSP 0167	Reilly	09/13/94	
<i>Haywood County Department of Social Services</i>				
Dorothy Morrow v. Haywood County Department of Social Services	94 OSP 0186	West	06/17/94	
<i>Pamlico County Department of Social Services</i>				
Mrs. Dietra C. Jones v. Pamlico Department of Social Services	94 OSP 0251	Chess	08/09/94	
<i>Lee County Health Department</i>				
James Shackleton v. Lee County Health Department	94 OSP 0344	Gray	08/17/94	
<i>Medical Assistance</i>				
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0991	Gray	10/27/94	
Delores Y. Bryant v. DHR, Division of Medical Assistance	94 OSP 0992	Gray	10/27/94	
<i>Mental Health/Mental Retardation</i>				
Yvonne G. Johnson v. Blue Ridge Mental Health	93 OSP 1604	Becton	03/18/94	
<i>Services for the Blind</i>				
Donna L. Williams v. DHR, Division of Services for the Blind	93 OSP 1610	Morrison	10/25/94	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>Wake County Mental Health, Developmental Disabilities, and Substance Abuse Services</i>				
Julia Morgan Brannon v. Wake County MH/DD/SAS	94 OSP 0214	Reilly	04/14/94	
<i>Wayne County Department of Social Services</i>				
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0539* ⁸	Mann	11/07/94	
Brently Jean Carr, Nancy Carol Carter v. Wayne County/Wayne County Department of Social Services	94 OSP 0540* ⁸	Mann	11/07/94	
<i>Youth Services</i>				
David R. Rodgers v. DHR, Div./Youth Services, Stonewall Jackson Sch.	94 OSP 0306	Chess	10/24/94	
<i>Justice</i>				
Delores Y. Bryant v. Department of Justice	94 OSP 0984	Gray	10/27/94	
<i>Public Instruction</i>				
Elaine M. Sills v. Department of Public Instruction	94 OSP 0781	Gray	10/06/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0981	Gray	11/28/94	
Delores Y. Bryant v. Department of Public Instruction	94 OSP 0982	Gray	11/28/94	
<i>Real Estate Appraisal Board</i>				
Earl Hansford Grubbs v. Appraisal Board	94 OSP 0753	Nesnow	08/24/94	
<i>Smoky Mountain Center</i>				
Betty C. Bradley v. Smoky Mountain Center	93 OSP 1505	Becton	09/26/94	9:14 NCR 1141
<i>N.C. State University</i>				
Laura K. Reynolds v. N.C. State University - Dept. of Public Safety	92 OSP 0828	Morgan	05/26/94	
Ashraf G. Khalil v. N.C.S.U.	93 OSP 1666	Nesnow	09/19/94	
Robin Lazenby Boyd v. NC State University Human Res./Scafood Lab	94 OSP 0779	Nesnow	12/01/94	
<i>Department of Transportation</i>				
Phyllis W. Newnam v. Department of Transportation	92 OSP 1799	Morgan	08/11/94	
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0297* ^d	Morrison	03/10/94	9:1 NCR 60
Glenn I. Hodge Jr. v. Samuel Hunt, Sec'y. Dept. of Transportation	93 OSP 0500* ^d	Morrison	03/10/94	9:1 NCR 60
Betsy Johnston Powell v. Department of Transportation	93 OSP 0550	Morrison	03/28/94	
Arnold Craig v. Samuel Hunt, Secretary Department of Transportation	93 OSP 0586	Nesnow	07/11/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	07/15/94	
Susan H. Cole v. Department of Transportation, Div. of Motor Vehicles	93 OSP 0908	Morrison	10/07/94	
Clyde Lem Hairston v. Department of Transportation	93 OSP 0944	Chess	02/28/94	
Angela Trueblood Westmoreland v. Department of Transportation	93 OSP 1001	Morrison	09/30/94	9:14 NCR 1136
Bobby R. Mayo v. Department of Transportation	93 OSP 1004	Nesnow	09/01/94	
Tony Lee Curtis v. Department of Transportation	93 OSP 1037	Reilly	08/26/94	
Darrell H. Wise v. Department of Transportation	93 OSP 1353	Gray	07/26/94	
Henry C. Puegh v. Department of Transportation	93 OSP 1710	Nesnow	05/24/94	
Kenneth Ray Harvey v. Department of Transportation	94 OSP 0423	Morrison	08/17/94	
Jean Williams v. Department of Transportation	94 OSP 0502	Morrison	11/22/94	9:18 NCR 1504
R. Stanley Morgan v. Department of Transportation	94 OSP 0586* ⁹	Reilly	12/13/94	
Bobby R. Mayo v. Department of Transportation	94 OSP 0632	Gray	08/23/94	
A. Dean Bridges v. Department of Transportation	94 OSP 0654* ⁹	Reilly	12/13/94	
Michael Bryant v. Department of Transportation	94 OSP 0728	Chess	08/15/94	
Pearlie M. Simuel-Johnson v. Department of Transportation	94 OSP 0844	Gray	11/14/94	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<i>University of North Carolina at Chapel Hill</i>				
William Paul Fearington v. University of North Carolina at Chapel Hill	91 OSP 0905	Reilly	10/19/94	
Paulette M. McKay v. University of North Carolina at Chapel Hill	92 OSP 0380 ^{#7}	Becton	10/24/94	
Paulette M. McKay v. University of North Carolina at Chapel Hill	92 OSP 0792 ^{#7}	Becton	10/24/94	
Eric W. Browning v. UNC-Chapel Hill	93 OSP 0925	Morrison	05/03/94	9:5 NCR 342
Beth Anne Miller, R.N.-C v. UNC James A. Taylor Std Health Svc.	94 OSP 0800	Nesnow	09/26/94	
<i>University of North Carolina at Greensboro</i>				
James S. Wilkinson v. UNCG Police Agency	93 OSP 0850	Chess	08/22/94	
<i>UNC Hospitals</i>				
Barry Alonzo Nichols v. UNC Hospitals Central Dist. Sect.	94 OSP 0509	Morrison	06/15/94	
<i>Wake County School System</i>				
Lula Mae Freeman v. Wake County School System	94 OSP 0576	Morrison	06/28/94	
<i>The Whitaker School</i>				
Dwayne R. Cooke v. The Whitaker School	94 OSP 0328	Chess	06/02/94	
<i>Winston-Salem State University</i>				
David Phillip Davis v. Winston-Salem State University	93 OSP 0947	Reilly	09/28/94	
Tonny M. Jarrett v. Winston-Salem State University Campus Police	93 OSP 0953	Reilly	09/12/94	
STATE TREASURER				
<i>Retirement Systems Division</i>				
Molly Wiebenson v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0015	Morgan	05/26/94	9:6 NCR 403
Judith A. Dorman v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	92 DST 0223	Morgan	08/11/94	
Nathan Fields v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0161	Morrison	05/18/94	
John C. Russell v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0164	West	03/07/94	
Marion Franklin Howell v. Teachers' & State Employees' Retirement Sys.	93 DST 0475	Nesnow	08/04/94	9:12 NCR 941
Robert A. Slade v. Bd./Trustees/N.C. Local Govtl. Emp. Ret. System	93 DST 0785	Becton	03/18/94	9:1 NCR 68
Connie B. Grant v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 0883	Chess	06/15/94	
James E. Walker, Ind. & Admin for the Estate of Sarah S. Walker v. Bd./Trustees/N.C. Local Govt. Emp. Ret. System	93 DST 1054	Becton	05/31/94	9:7 NCR 490
Elizabeth M. Dudley v. Bd./Trustees/Teachers' & State Emps' Ret. Sys.	93 DST 1474	Nesnow	03/28/94	
Kenneth A. Glenn v. Bd./Trustees/Teachers' & St Employees' Ret. Sys.	93 DST 1612	Morrison	05/18/94	
Joseph Fulton v. Bd./Trustees/Teachers' & State Employees' Ret. Sys.	93 DST 1731	Becton	05/25/94	
Deborah W. Stewart v. Bd./Trustees/Teachers' & State Employees' Ret. Sys. and Anthony L. Hope & Derrick L. Hope	94 DST 0045	Nesnow	07/25/94	9:10 NCR 768
TRANSPORTATION				
Taylor & Murphy Construction Co., Inc. v. Department of Transportation	93 DOT 1404	Chess	08/24/94	
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION				
Robert Tolbert v. U.S. Equal Employment Opportunity Commission	94 USE 1410	Gray	12/14/94	
UNIVERSITY OF NORTH CAROLINA				
Heather Anne Porter v. State Residence Committee	92 UNC 0799	Nesnow	08/23/94	
Nixon Omolodun v. UNC Physicians and Associates	94 UNC 0295	Chess	06/27/94	

v.

**EAST CAROLINA UNIVERSITY,
Respondent.**

RECOMMENDED DECISION

APPEARANCES

Respondent: Thomas O. Lawton, Esq., Assistant Attorney General

ISSUE

FINDINGS OF FACT

Stipulated Facts

1. In December, 1993, East Carolina University had a vacant Accounting Technician III position in its Student Fund Accounting Office (SFAO).
2. Petitioner Lois Toler Wilson applied for and was qualified for the Accounting Technician III position in the SFAO.
3. Petitioner, a current employee with Respondent, was born October 20, 1951 and was 42 years old at the time the Accounting Technician III vacancy was filled.
4. Petitioner's application for the position was rejected. Respondent filled the position with a current employee who was 30 years old at the time of the promotion.

Adjudicated Facts

5. The SFAO is a subordinate division of Respondent's Comptroller's Office. The Comptroller's Office generally is responsible for auditing and supervising Respondent's financial affairs; other divisions of the Comptroller's Office include contracts, grants, and accounts payable.

6. The SFAO handles several functions for student funds including accounts payable, payroll, and purchasing.
7. The Accounting Technician III position which was vacant in December, 1993 was for a manager of the SFAO. The December, 1993 job posting for this position included the following requirements: graduation from high school and a two year degree in business with at least one year of additional education or one year of experience in an accounting field. The posting also stated that the position required knowledge of University purchasing, accounts payable, and payroll procedures. Preferred qualifications included five years experience in bookkeeping or accounting.
8. Respondent's Director of Accounting, Johnnie L. Peterson, supervises the SFAO manager and assisted in developing the job announcement.
9. When the posting period closed, Mr. Peterson reviewed the eighteen to twenty applications received for the vacancy. He then consulted with Dan Bishop, Respondent's Comptroller, and the two of them determined which applicants to interview. Although they decided to interview four candidates, only three of the candidates could be contacted. The candidates interviewed were Petitioner, Melanie Bunch, and a third candidate.
10. Mr. Peterson and Mr. Bishop jointly conducted interviews of the three candidates. Melanie Bunch was selected based upon her qualifications, which were considered to be superior to those of the other candidates.

Ms. Bunch had experience in accounts payable, in payroll, and in purchasing. She had regular contact with outside vendors and she knew the Lotus 1-2-3 spreadsheet application used by East Carolina University. Ms. Bunch holds a Bachelor's degree from East Carolina University in Business Administration, a higher academic achievement than required by the position description as posted.

11. Although Petitioner was qualified for the position by virtue of experience, she did not have the desired minimum of a two year degree in business administration or any other kind of degree from an accredited college or university.
12. Petitioner, at the time of her job interview, did not know the Lotus 1-2-3 spreadsheet application used by the University since about 1989. She was familiar with another spreadsheet, SperryCalc, which was then obsolete within the University system.
13. The two females who preceded Ms. Bunch in the SFAO manager's position, Angela Wilson and Terry Heatherly, each know Lotus 1-2-3 before they came to the position. Knowledge of Lotus 1-2-3 was the deciding factor in the hiring of Ms. Heatherly, who was more than 40 years old, over another applicant.
14. At the time of her interview, Ms. Bunch had been an accounting Clerk IV in Respondent's accounts payable department for over four years. Her duties there included processing of purchase orders and daily contact with outside vendors. Before working in accounts payable, Ms. Bunch worked for several months in Respondent's payroll department where she processed several hundred student paychecks regularly.
15. Petitioner has worked for Respondent for 18 years. She has experience in purchasing and accounts payable for grants in the East Carolina University School of Medicine. Her last work in accounts payable occurred in 1989. In her present position, which she held at the time of the interview, Petitioner functions as liaison between the Medical School and the Grants Administration Office of East Carolina University. She has payroll responsibility for one student who works in her office. She has not had significant contact with outside vendors during her work experience, having spoken with outside vendors only twice during the last eleven years.

6. Mr. Peterson prepared and submitted to Respondent's Human Resources Department an EEO referral report for each of the three candidates interviewed by himself and Mr. Bishop. The Human Resources Department requested further information justifying the selection of Ms. Bunch. Mr. Peterson met with representatives from Human Resources and filled out a more detailed referral report. Respondent's Human Resources Department then approved the report and the selection of Ms. Bunch for the position.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, I make the following conclusions of law.

1. The parties are properly before the Office of Administrative Hearings.
2. Petitioner has alleged age discrimination in Respondent's failure to promote her to Accounting Technician III and therefore bears the burden of proof, by the greater weight of the evidence, that she was not selected for the position because of her age. North Carolina Department of Correction v. Gibson, 308 N.C. 131, 301 S.E.2d 78 (1983). While the burden of production may shift during the analysis of this case, the ultimate burden of persuasion remains with Petitioner. St. Mary's Honor Center v. Hicks, ___ U.S. ___ 113 S.Ct. 2742 (1993).
3. The framework for analysis of the evidence produced in this hearing has been established by our courts. The following standards have been applied:
 - (1) The claimant carries the initial burden of establishing a prima facie case of discrimination.
 - (2) The burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the applicant's rejection.
 - (3) If a legitimate nondiscriminatory reason for rejection has been articulated, the claimant has the opportunity to show that the stated reason for rejection was, in fact, a pretext for discrimination. (citations omitted). Gibson, 308 N.C. at 137, 301 S.E.2d at 82.
4. Petitioner's age of 42 at the time of her interview places her in the protected class for purposes of age discrimination. She applied and was qualified for the Accounting Technician III position. Petitioner was not selected for the position. The person selected for the position was under 40 years of age and therefore outside of the protected class. Petitioner thus has established a prima facie case of age discrimination.
5. Respondent's evidence demonstrates that its contention that Ms. Bunch had superior qualifications, in terms of experience in accounts payable, payroll, purchasing, outside vendor contact, and Lotus 1-2-3 spreadsheet application, as well as a four year degree in business administration, is supported by the greater weight of the evidence and constitutes a specific nondiscriminatory reason for Respondent's decision to place Ms. Bunch in the position.
6. Petitioner has failed to demonstrate by the greater weight of the evidence, either direct or indirect, that Respondent's proffered reasons for her nonselection are mere pretext for intentional discrimination.

RECOMMENDED DECISION

Based upon the foregoing findings of fact and conclusions of law, it is hereby recommended that Respondent's decision denying Petitioner's application for promotion to Accounting Technician III at East Carolina University be affirmed as based on legitimate nondiscriminatory reasons supported by evidence of qualifications of the candidates involved.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the N.C. State Personnel Commission.

This the 6th day of December, 1994.

Beecher R. Gray
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
94 EHR 1031**

GENERAL ELECTRIC COMPANY, INC.,
Petitioner,

v.

**DEPARTMENT OF ENVIRONMENT, HEALTH,
AND NATURAL RESOURCES,
ENVIRONMENTAL MANAGEMENT COMMISSION
and CITY OF MEBANE,**
Respondent.

ORDER

The Petition, filed on September 23, 1994, contested the payment of a civil penalty. The Respondents filed a Motion to Dismiss on November 2, 1994, because the "monetary assessment against Petitioner by the City of Mebane was not the result of any action taken by Respondent."

The Petitioner filed a Response on November 14, 1994, contending that the Office of Administrative Hearings has subject matter jurisdiction concerning the appeal of the civil penalty. The undersigned administrative law judge agrees with the Petitioner.

II.

The Environmental Management Commission is authorized to issue pretreatment permits and to engage in enforcement actions. G.S. 143-215.1 - 215.6A(a)(2). This authority has been delegated to the City of Mebane by the Commission. The Commission is empowered "to certify and approve . . . requests by a publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with the treatment processes." G.S. 143-215.3(a)(14). The statute further regulates the manner in which this authority is exercised:

Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

15 NCAC 2H.0900 contains sixteen pages of regulations which implement G.S. 143-215.3(a)(14) and 143-215.1. The scope of the rules applies to "(p)ollutants from non-domestic sources covered by Pretreatment Standards which are indirectly . . . introduced into" the treatment works, treatment works "which receive wastewater from sources subject to Pretreatment Standards", and "any new or existing source subject to Pretreatment Standards." .0902.

The rules detail how a publicly owned treatment works operates. The publicly owned treatment works "must submit a request to the (Department) for approval of modifications to its approved pretreatment program." 15 NCAC 2H.0907(b). The program includes an Enforcement Response Plan which "describes the guidelines for identifying violations of and enforcing specific local limits and other pretreatment standards and requirements." .0903(b)(8). Revision of a list of significant industrial users, such as petitioner, must similarly be approved. .0907(c). These users must obtain a permit from the treatment works. .0916(a).

This statutory and regulatory framework establishes control by the respondent Department and Commission over the actions, including the assessment of a civil penalty, of the respondent City of Mebane in administering the pretreatment program. The Office of Administrative Hearings has jurisdiction over all agencies, except those expressly exempted. See Empire Power Company v. DEHNR, ___ N.C. ___, ___ S.E.2d ___ (September 9, 1994). "Agency" is defined as "an agency or officer in the executive branch of the government of this State . . . A local unit of government is not an agency." G.S. 150B-2(1). The Department and Commission are agencies. A local unit of government, although not included in the definition, may be an agent of an agency. The agent's actions become those of the agency.

In Vaughn v. Department of Human Resources, 296 N.C. 683, 252 SE2d 792 (1979), the claimant filed a claim against the Department of Human Resources under the Tort Claims Act because the Durham County Department of Social Services placed a foster child with cytomegalo virus in her home despite knowing that the claimant was attempting to become pregnant. The claimant became pregnant and infected with the virus. The issue was whether the local department was an agent of the state department.

The Supreme Court stated:

Whenever the principal retains the right 'to control and direct the manner in which the details of the work are to be executed' by his agent, the doctrine of respondeat superior operates to make the principal vicariously liable for the tortious acts committed by the agent within the scope of his employment. (Citations omitted.) Conversely, a principal is not vicariously liable for the tortious acts of an agent who is not subject to the control and direction of the principal with respect to the details of the work and is subordinate only in effecting a result in accordance with the principal's wishes. (Citations omitted.) In sum, a principal's vicarious liability for the torts of his agent depends on the degree of control retained by the principal over the details of the work as it is being performed. The controlling principle is that vicarious liability arises from the right of supervision and control. (Citations omitted.) (*Id.* at 686, 795)

In Vaughn, the Court examined the relationship of the Director of the Durham County Department of Social Services and the Department of Human Resources. The former placed children in foster home care in accordance with the rules of the Social Services Commission which provided standards governing placements. The standards detailed the role of the Director and his staff regarding appropriate supervision of the children, seeking a petition for separation from the natural parents, involvement of the natural parents, requirements for a suitable foster home, the type of medical care, clothing and nourishment for the children, the duration of the placement, and the evaluation of the placement.

Although the operation of a publicly owned treatment works differs from the placement of a child in foster home care, the supervision and control of the respondent Department and Commission over the former and that of the Department of Human Resources over the latter are identical. The Supreme Court clearly stated that it was the degree of control that established an agency and made the actions of the County Director attributable to the State.

Our holding is narrowly premised on the ground that the Department of Human Resources through the Social Services Commission has the right to control the manner in which the County Director is to execute his obligation to place children in foster care. (*Id.* at 692, 798)

III.

The City of Mebane acts under the pretreatment program as an agent of the respondent Department and Commission; its actions are those of the Department and Commission; and the Department and Commission are subject to Article 3 of G.S. Chapter 150B. Therefore, the Office of Administrative Hearings has exclusive subject matter jurisdiction to hear the appeal of the civil penalty. The Motion to Dismiss is DENIED.

This the 30th day of November, 1994.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

CUMULATIVE INDEX
(April 1994 - March 1995)

Pages	Issue
1 - 75	1 - April
76 - 122	2 - April
123 - 226	3 - May
227 - 305	4 - May
306 - 348	5 - June
349 - 411	6 - June
412 - 503	7 - July
504 - 587	8 - July
588 - 666	9 - August
667 - 779	10 - August
780 - 876	11 - September
877 - 956	12 - September
957 - 1062	13 - October
1063 - 1151	14 - October
1152 - 1241	15 - November
1242 - 1339	16 - November
1340 - 1392	17 - December
1393 - 1512	18 - December
1513 - 1602	19 - January

Unless otherwise identified, page references in this Index are to proposed rules.

ADMINISTRATION

State Employees Combined Campaign, 878

AGRICULTURE

Plant Industry, 127, 1245

COMMERCE

Alcoholic Beverage Control Commission, 423
Banking Commission, 884, 1515
Community Assistance, 1394
Energy Division, 4

COMMUNITY COLLEGES

Community Colleges, 1305

CORRECTION

Prisons, Division of, 1157

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol, Division of, 243

CULTURAL RESOURCES

Arts Council, 960

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management, 443, 825, 1185, 1283, 1427, 1550
DEM/Air Quality, 80, 805
Departmental Rules, 254
Environmental Management, 81, 258, 352, 616, 959, 1261, 1348, 1405
Health Services, 323, 370, 445, 834, 913, 1000, 1112, 1557
Marine Fisheries Commission, 820, 989, 1109, 1244
Mining Commission, 442
NPDES Permit, 3, 232
Parks and Recreation, 1194
Radiation Protection Commission, 678
Soil and Water Conservation, 1371
Solid Waste Management, 171, 364, 1287
Water Resources, 165, 255
Wildlife Resources Commission, 38, 42, 84, 358, 830, 910, 999, 1285, 1427, 1553
Wildlife Resources Commission Proclamation, 125

FINAL DECISION LETTERS

Voting Rights Act, 2, 312, 506, 594, 958, 1243, 1340, 1393

GENERAL STATUTES

Chapter 150B, 780

GOVERNOR/LT. GOVERNOR

Executive Orders, 1, 123, 227, 306, 349, 412, 504, 588, 667, 877, 957, 1152, 1242, 1513

HUMAN RESOURCES

Child Day Care Commission, 10
Child Development, 1531
Children's Services, 136
Day Care Rules, 148
Departmental Rules, 668
Facility Services, 4, 128, 423, 509, 668, 890, 1341
Medical Assistance, 318, 440, 513, 597, 964, 1155, 1247
Medical Care, 1161
Mental Health, Developmental Disabilities and Substance Abuse Services, 13, 24, 36, 313, 430, 961, 1063
Social Services, 136, 595, 802, 1167, 1343
Vocational Rehabilitation Services, 434

INDEPENDENT AGENCIES

State Health Plan Purchasing Alliance Board, 99, 1030

INSURANCE

Actuarial Services Division, 1072, 1257
Agent Services Division, 1065
Departmental Rules, 891
Financial Evaluation Division, 892
Life and Health Division, 525, 905, 1071, 1255
Medical Database Commission, 605
Multiple Employer Welfare Arrangements, 76
Property and Casualty Division, 892
Special Services Division, 76

JUSTICE

Alarm Systems Licensing Board, 351, 614, 804, 1175
Criminal Justice Education and Training Standards Commission, 149, 981
Private Protective Services, 802, 1174, 1400
Sheriffs' Education & Training Standards Commission, 670, 986, 1075
State Bureau of Investigation, 234, 530

LABOR

Boiler and Pressure Vessel, 1076
Mine and Quarry Division, 239
OSHA, 77, 160, 675, 906, 1258, 1401, 1546
Private Personnel Services, 1176
Variance, 230

LICENSING BOARDS

Acupuncture Licensing Board, 44
Auctioneers Licensing Board, 836
Barber Examiners, 563
Chiropractic Examiners, 376
Cosmetic Art Examiners, 280, 1027
Dietetics/Nutrition, 1115
Electrical Contractors Examiners, 1199
Electrolysis Examiners, 1204
Landscape Architects, Board of, 95
Medical Examiners, 192, 565, 1119, 1206
Mortuary Science, 720, 1120
Nursing, Board of, 45, 724, 1209
Opticians, Board of, 845
Optometry, Board of Examiners, 194
Physical Therapy Examiners, 566
Plumbing, Heating and Fire Sprinkler Contractors, Board of, 96, 725
Practicing Psychologists, Board of, 97, 1571
Professional Counselors, Board of Licensed, 50
Professional Engineers and Land Surveyors, 728, 924
Sanitarian Examiners, 730

LIST OF RULES CODIFIED

List of Rules Codified, 53, 196, 281, 378, 635, 742, 926, 1041, 1306, 1480

PUBLIC EDUCATION

Elementary and Secondary Education, 375, 540, 920, 1197, 1568

SECRETARY OF STATE

Land Records Management Division, 712
Notary Public Division, 1112
Securities Division, 476, 616, 709

STATE PERSONNEL

Office of State Personnel, 477, 847, 1214, 1574

TAX REVIEW BOARD

Orders of Tax Review, 415

TRANSPORTATION

Administration, Director of, 1478

Highways, Division of, 85, 718, 923, 1114, 1300

Motor Vehicles, Division of, 89, 276, 542



BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE

The full Barclays Official North Carolina Administrative Code consists of 22 volumes, totaling in excess of 10,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication, including supplements, can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available at one-half the new subscription price.

PRICE LIST FOR THE SUBSCRIPTION YEAR

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
1 - 22	Full Code		All titles	\$750.00	_____	_____
1	1	1 - 39	Administration	\$90.00	_____	_____
2	2	1 - 24	Agriculture	\$75.00	_____	_____
2	2	25 - 53	Agriculture	\$75.00	_____	_____
2	3	1 - 4	Auditor	\$10.00	_____	_____
3	4	1 - 2	Commerce (includes ABC)	\$45.00	_____	_____
4	4	3 - 20	Commerce	\$90.00	_____	_____
5	5	1 - 2	Correction	\$60.00	_____	_____
5	5	3 - 4	Correction	\$30.00	_____	_____
5	6	1 - 4	Council of State	\$30.00	_____	_____
5	7	1 - 12	Cultural Resources	\$60.00	_____	_____
6	8	1 - 9	Elections	\$10.00	_____	_____
6	9	1 - 4	Governor/Lt. Governor	\$45.00	_____	_____
7	10	1 - 2	Human Resources	\$30.00	_____	_____
7	10	3A - 3K	Human Resources	\$90.00	_____	_____
7	10	3L - 3R	Human Resources	\$45.00	_____	_____
7	10	3S - 3W	Human Resources	\$30.00	_____	_____
8	10	4 - 6	Human Resources	\$30.00	_____	_____
8	10	7	Human Resources	\$30.00	_____	_____
8	10	8 - 9	Human Resources	\$30.00	_____	_____
8	10	10	Human Resources	\$30.00	_____	_____
8	10	11 - 14	Human Resources	\$60.00	_____	_____
8	10	15 - 17	Human Resources	\$45.00	_____	_____
9	10	18	Human Resources	\$75.00	_____	_____
9	10	19 - 30	Human Resources	\$90.00	_____	_____
10	10	31 - 33	Human Resources	\$30.00	_____	_____
10	10	34 - 41	Human Resources	\$60.00	_____	_____
11	10	42	Human Resources	\$45.00	_____	_____
11	10	43 - 51	Human Resources	\$90.00	_____	_____
12	11	1 - 19	Insurance	\$90.00	_____	_____
13	12	1 - 12	Justice	\$90.00	_____	_____
14	13	1 - 6	Labor	\$30.00	_____	_____
14	13	7	OSHA	\$45.00	_____	_____
14	13	8 - 16	Labor	\$45.00	_____	_____
14	14A	1 - 11	Crime Control and Public Safety	\$45.00	_____	_____
15	15A	1 - 2	EHNR (includes EMC)	\$90.00	_____	_____
15	15A	3 - 6	EHNR	\$45.00	_____	_____
15	15A	7	Coastal Management	\$45.00	_____	_____
16	15A	8 - 9	EHNR	\$30.00	_____	_____
16	15A	10	Wildlife	\$45.00	_____	_____

Volume	Title	Chapter	Subject	New Subscription*	Quantity	Total Price
16	15A	11 - 18	EHNR	\$90.00	_____	_____
17	15A	19 - 26	EHNR		_____	_____
		(includes Breathalyzer)		\$75.00	_____	_____
18	16	1 - 6	Education	\$30.00	_____	_____
18	17	1 - 6	Revenue	\$75.00	_____	_____
18	17	7 - 11	Revenue	\$60.00	_____	_____
19	18	1 - 8	Secretary of State	\$30.00	_____	_____
19	19A	1 - 6	Transportation	\$90.00	_____	_____
19	20	1 - 9	Treasurer	\$45.00	_____	_____
20	21	1 - 16	Licensing Boards	\$75.00	_____	_____
20	21	17 - 37	Licensing Boards	\$75.00	_____	_____
21	21	38 - 70	Licensing Boards	\$60.00	_____	_____
N/A	22	(repealed)	Administrative Procedures	N/A	_____	_____
22	23	1 - 3	Community Colleges	\$10.00	_____	_____
22	24	1 - 5	Independent Agencies	\$10.00	_____	_____
22	25	1	State Personnel	\$60.00	_____	_____
22	26	1 - 4	Administrative Hearings	\$10.00	_____	_____
Binders (1 binder per item ordered)				\$16.00	_____	_____
Shipping & Handling (per item ordered)				\$4.50	_____	_____
(entire code)				\$85.00	_____	_____
Subtotal						_____
(North Carolina sales tax 6%)						_____
Total						_____

(Make checks payable to **Barclays Law Publishers**)

* This price includes the title in its current form plus supplementation for the subscription year.

Mail To:

BARCLAYS LAW PUBLISHERS

P.O. BOX 3066

SOUTH SAN FRANCISCO, CA 94083-3066

Phone: (800) 888-3600

Fax: (415) 244-0408

Name

Address

Room/Suite

City

State

Zip

Phone Number

If Credit Card Order:

☐ VISA

☐ Master Card

☐ American Express

Credit Card Number

Exp. Date

Signature

Office of Administrative Hearings
P.O. Drawer 27447
Raleigh, North Carolina 27611-7447

FOLD HERE

NORTH CAROLINA REGISTER ORDER FORM

Please enter my subscription for the *North Carolina Register* to start with the _____ issue.
(\$105.00/year subscription. N.C. subscribers please add sales tax.)

Renew *North Carolina Register*

Check Enclosed ☐ Please bill me

Please make checks payable to Office of Administrative Hearings

NAME _____ ADDRESS _____

CITY _____ STATE _____ ZIP _____

PHONE _____

Return to Office of Administrative Hearings - fold at line, staple at bottom and affix postage.)

CHANGE OF ADDRESS

1. Present Address

NAME

ADDRESS

CITY

STATE

ZIP

2. New Address

NAME

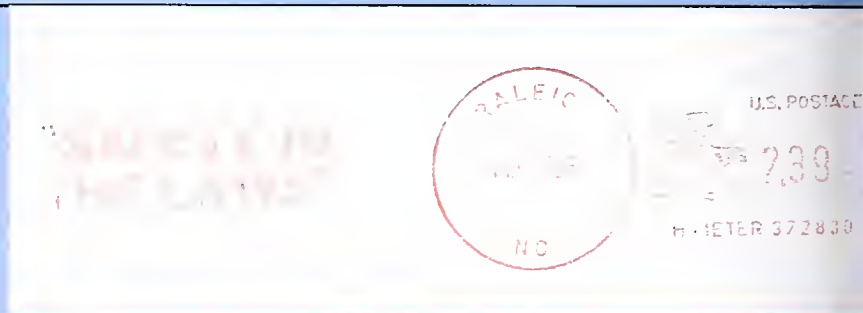
ADDRESS

CITY

STATE

ZIP

Office of Administrative Hearings
P.O. Drawer 27447
Raleigh, North Carolina 27611-7447



FIRST CLASS MAIL

585
UNIV. OF NORTH CAROLINA
LAW LIBRARY CB# 3385
VAN HECKE-WETTACH 064-A
CHAPEL HILL

NC 27599